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Part II

National Credit Union Administration

12 CFR Parts 701, 707 and 740
Truth in Savings; Final Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 707 and 740

Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration Board (Board) is publishing a new regulation to implement the Truth in Savings Act (TISA). TISA and the regulation require all federal credit unions (FCUs), federally insured state-chartered credit unions (FISCUs), and nonfederally insured credit unions (NICUs) to disclose fees, dividend (or interest, if applicable) rates and other terms concerning accounts to members or potential members before they open accounts. The law and this regulation require credit unions that provide periodic statements to members to include information about fees imposed, dividends (or interest, where applicable) earned and the annual percentage yield earned on those statements. TISA and the regulation impose substantive limitations on the methods used by credit unions to determine the balance on which dividends are calculated. Rules dealing with advertisements for accounts are also included in the law and the regulation.

EFFECTIVE DATE: January 1, 1995, except for § 707.3–9, which contain information collection requirements that are not effective until approved by OMB. When approval is received, the agency will publish a document announcing the effective date.

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SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law No. 102–242, 12 U.S.C. 4301 *et seq.*) was enacted in December 1991. The statute directed the Federal Reserve Board (FRB) to issue final regulations, governing depository institutions other than credit unions, by September 19, 1992. The FRB has promulgated a final TISA rule, 12 CFR part 230, known as Regulation DD. 57 FR 43337 (September 21, 1992). Regulation DD became effective on September 21, 1992, but, under TISA, as amended by the Housing and Community Development Act of 1992 (HCDA), compliance was not mandatory until June 21, 1993. TISA also directs the Board to promulgate regulations governing credit unions within 90 days of the mandatory effective date of the FRB's final rule. NCUA is issuing this regulation as part 707 of the NCUA Rules and Regulations, 12 CFR part 707.

On November 13, 1992, the Board issued for comment a proposed truth in savings regulation. 57 FR 56686 (November 30, 1992). A technical correction was issued in December. 57 FR 60141 (December 18, 1992). At the same time, the Board withdrew a proposed amendment to § 701.35 of the NCUA Rules and Regulations. (Proposed rule, 55 FR 21618, May 25, 1990; Withdrawal of Proposed Rule, 57 FR 56686, 56687, November 30, 1992.) Also at the time that part 707 was proposed, the Board proposed conforming amendments to § 701.35 and § 740.2 of its regulations. The original comment period ended on March 1, 1993. In response to requests received, the Board extended the comment period to April 1, 1993. 58 FR 11801 (March 1, 1993).

Comments were requested on all aspects of the proposal. The Board also solicited comments on a number of specific issues. 392 comment letters were received: 205 from FCUs, 101 from FISCUs, 21 from NICUs, 1 from a state credit union regulator, 26 from credit union leagues, 2 from national credit union trade associations, 10 from corporate credit unions, and 26 from other sources. Three hundred two commenters expressed qualified support for the proposal. Ninety commenters were basically opposed to the proposal.

The final rule, like the proposal, requires all FCUs, FISCUs, and NICUs to disclose fees, dividend (or interest, if applicable) rates and other terms concerning accounts to members or potential members before they open accounts. The rule also requires credit unions that provide periodic statements to members to include information about fees imposed, dividends (or interest, where applicable) earned and the annual percentage yield earned on certain statements. The final rule also prescribes rules for account advertisements.

In addition, the final rule implements TISA's substantive limitations on the methods used by credit unions to determine the balance on which dividends are calculated. The proposal would have permitted credit unions to use the daily balance, average daily balance, rollback, or par value dividend calculation methods. The final rule allows only the daily balance and average daily balance methods; the rollback method and the par value method have been eliminated. The final rule makes a number of other changes, both substantive and technical, which are discussed in the section-by-section analysis in part VI of the supplementary information.

II. Scope of NCUA Authority

Section 272(b) of TISA (12 USC 4311(b)) mandates that the Board's regulations be "substantially similar" to those issued by the FRB, but the Board may take into account the unique nature of credit unions and the limitations under which they may pay dividends. It is the opinion of the NCUA that this authority also encompasses and incorporates the authority granted to the FRB in section 269(a)(3) of TISA, 12 USC 4308(a)(3). Section 269(a)(3) of TISA permits the agency to contain such classifications, differentiations, or other provisions, and to provide for such adjustments and exceptions for any class of accounts as, in the judgment of the agency, are necessary or proper to carry out the purposes of TISA, to prevent circumvention or evasion of the requirements of TISA, or to facilitate compliance with the requirements of TISA. NCUA also is of the opinion that it has the authority to issue model forms and clauses for common disclosures to facilitate credit unions' compliance with TISA, authority expressly granted to the FRB under section 269(b) of TISA. Such sample clauses and model forms are included as appendix B to this part 707.

A. Uniqueness of Credit Unions

A credit union is a not-for-profit, cooperative financial institution formed to permit those in the field of membership specified in its charter to save, borrow and obtain related financial services. A credit union is a financial institution owned by its members. These members, who are united through a common bond or community, democratically manage and control a pool of capital for their mutual benefit. Member ownership and control makes all credit unions unique. The uniqueness of credit unions developed historically and independently from other financial institutions.

In 1934, Congress passed the Federal Credit Union Act (FCU Act) to establish a Federal Credit Union System, to establish a further market for securities of the United States and to make more available to people of small means credit for provident purposes through a national system of cooperative credit, thereby helping to stabilize the credit structure of the United States. That Act set the basic structure which governs FCUs today, and also mirrors the structure governing FISCUs and NICUs:

1. *Cooperative ownership*. Credit unions are owned by their members cooperatively. Each credit union is funded by shares purchased by its members; credit unions do not have capital stock and their capital consists of accumulated reserves. The purchase of a share allows the member to become an owner with the right to vote.

2. *Limited membership*. Membership is limited to groups, each defined in the credit union's charter, who share a common bond of occupation or association, or reside in the same community. Generally, credit unions do not compete with one another, nor do they accept accounts from, or provide services to, nonmembers or the general public.

3. *Democratic operation*. Member control is democratically exercised regardless of the number of shares held. No member has more than one vote. Proxy voting is prohibited for FCUs; boards and management must participate in an annual meeting with members and account for their performance. In order to determine parity on this uniqueness issue, the Board asked for comments on whether proxy voting is prohibited for state-chartered credit unions. The comments indicated that the legality of proxy voting varies from state to state, and the final rule makes no changes based on this issue.

4. *Volunteer management*. Management is placed in the hands of volunteer members. In FCUs, only one board officer may be compensated. No other member of the board of directors or any other committee member shall, as such, be compensated. Almost all directors and committee members serve without pay in all credit unions. Within the movement, there is a free sharing of ideas and resources that is rarely found among profit-oriented depository institutions.

5. *Limited lending*. Loans are made exclusively to members, not to the public at large.

6. *Dividends earned, not interest paid*. Generally, members earn dividends on their accounts, not interest. Net earnings are returned to members in the form of dividends on savings, lowered interest rates and/or rebates of interest charged on loans.

The foregoing unique features of credit unions were discussed in the proposal. The Board solicited comments on whether credit unions are unique in other ways that would affect part 707. Although the comments received were well reasoned, they did not raise any new uniqueness issues that would necessitate changes to the rule. One commenter argued that although credit unions are unique in many respects, the regulation's goal should be to simplify dividend calculation methods to permit comparisons among financial institutions. The Board agrees that facilitating comparisons among accounts at all financial institutions is a major intent of TISA, and has drafted the final rule with that goal in mind.

The agency also solicited comments on how to limit the regulatory burden on credit unions under this truth in savings regulation, while still meeting the requirements and spirit of TISA. Although numerous letters discussed the burdens imposed by the proposed rule, only four comments actually included suggestions for ways to reduce the burden. Most of the recommended changes were to provisions that come directly from TISA, and which the Board has no discretion to change. One commenter requested that the Board standardize the use of the terms "business days" and "calendar days" in the rule. The final rule eliminates the conflict in this area. (See § 707.4(a)(1) and discussion of "business day" under supplementary information for § 707.2.)

B. Limitations on Payment of Dividends

Member savings are placed in credit unions in the form of share accounts. Shares are equity investments, and the returns earned on these accounts are dividends. Section 117 of the FCU Act provides that, at such intervals as the board of directors may authorize, and after provision for required reserves, the board of directors may declare a dividend to be paid at different rates on different types of shares, at different rates and maturity dates in the case of certificates, and at different rates on different types of share draft accounts. Dividends credited may be accrued on various types of shares, certificates, and share draft accounts as authorized by the board of directors. 12 U.S.C. 1763.

Dividends may be viewed as a portion of the available current and undivided earnings of the credit union which is set apart, after required transfers to reserves, by valid act of the board of directors, for distribution among the members. As a matter of legal procedure, members are not entitled to dividends until the following steps are completed: (1) The board of the credit union must develop 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 provision for required reserves must be made; (3) sufficient and available prior and/or current earnings must be available at the close of a dividend period; (4) the board of the credit union must formally make a dividend declaration on different classes of accounts, in accord with the credit union's dividend policy; and (5) the dividends must be paid to the members by a credit to the appropriate share account, payment by check or by a combination of the two methods.

Legally, it is the declaration of the dividend which creates the dividend itself 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. This duty cannot be abrogated by contract. However, an agreement to pay dividends on a share account is 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. Thus, it is acceptable to discuss the disclosures required by TISA as prospective dividends with this distinction in mind. Note that the proposed definitions of "dividend" and "dividend rate" apply to both prospective and declared dividends. Otherwise, credit unions would not be permitted to disclose any rates except old, past rates already declared. This would be counter to the purposes of TISA.

III. Timetable

TISA will not apply to credit unions until the effective date of the Board's regulation. When the proposal was published, the Board anticipated that the final rule would be promulgated by June 19, 1993, and effective by the end of 1993 or the beginning of 1994. (The Board delayed promulgation of the final rule until September 9, 1993, based on the extension of the effective date of the FRB's rule granted by the HCDA.) Because TISA does not require a particular effective date for NCUA's rule, the Board requested comments on the timing of the effective date.

The Board considered an effective date of July 1, 1994, which would have given credit unions just over nine months to comply, a period approximately equal to that afforded other financial institutions by TISA, as amended by the HCDA. However, nearly half of the commenters who addressed this issue recommended that the effective date be nine months or more after promulgation of the final rule. Eighteen of those commenters requested an effective date later than January 1, 1995. Another seven suggested that there be a later effective date for small, nonautomated credit unions, or that such credit unions be exempt from the rule.

The Board has been extremely concerned about the effect that this regulation will have on small, nonautomated credit unions that offer rollback or other low balance accounts. As discussed elsewhere in this supplementary information (see § 707.7(c) and discussion of Regulatory Flexibility Act), the rule, particularly the requirements for daily balance or average daily balance calculations, will create substantial financial hardship for such entities. In addition to facing the compliance burden imposed upon all credit unions, the majority of these small credit unions will have to purchase computer equipment or services, change their balance calculation methods, and train their staffs in the new methods. Many commenters have indicated that it will be literally impossible for some of these credit unions to comply within nine months. Fifteen months is the time frame most often suggested to the Board as reasonable for compliance.

The Board is persuaded by the comments that a later effective date than that originally contemplated is necessary. The final rule, promulgated on September 9, 1993, prescribes an effective date of January 1, 1995. This will give credit unions approximately fifteen months from promulgation of the final rule to prepare for compliance. This time frame should be sufficient to afford even small, noncomputerized credit unions sufficient time to comply with the rule. Although the Board considered setting one effective date for small, nonautomated credit unions and another, earlier date for all other credit unions, it ultimately rejected that idea. While TISA does give the Board authority to vary its rule based on the unique nature of credit unions, the Board does not believe that such authority would allow it to treat small credit unions differently from other credit unions. Moreover, the Board believes that it would be confusing for credit union members if different credit unions had different compliance dates. Therefore, the January 1, 1995, effective date applies to all credit unions. Credit unions that are able to comply prior to January 1, 1995, are encouraged to do so.

IV. Purpose of TISA

The purpose of the statute and final regulation is to assist consumers, including credit union members and potential members, in comparing accounts offered by credit unions and other depository institutions, principally through the disclosure of fees, the dividend rate or interest rate, the annual percentage yield, and other account terms whenever a consumer requests the information and before an account is opened. TISA and the final rule also require that fees and other information be provided on any periodic statement the credit union sends to the member. Rules are also set forth for the information contained in advertisements of accounts and advance notice to accountholders of adverse changes in terms. The statute and regulation place one substantive restriction on credit unions' practices: How credit unions determine the account balance on which dividends or interest are calculated.

V. Regulatory Provisions

TISA is quite detailed and, for the most part, the regulation mirrors the statutory requirements. As previously discussed, the rule promulgated by NCUA must be "substantially similar" to the TISA rule promulgated by the FRB, except that NCUA may take into account the unique nature of credit unions and the limitations under which they pay dividends. Therefore, most of part 707 parallels the FRB's Regulation DD, except for changes referencing and discussing business day, credit unions, dividends, dividend period, dividend rate, members, the nature of dividends, periodic statement disclosures and potential members. Those changes are discussed herein. To aid in the comprehension of part 707, NCUA has incorporated much of the FRB's preamble language from final Regulation DD. In drafting both proposed and final part 707, the NCUA staff was mindful that TISA requires NCUA's regulation to be substantially similar to Regulation DD, and has interpreted that limitation as granting NCUA only the discretion to rewrite those portions of Regulation DD where credit unions are unique or where the limitations on which dividends are paid apply.

The section-by-section description which follows points out those provisions that differ in any significant way from the FRB's regulation—for example, creating an exception, adding a disclosure, or departing significantly from the language of the FRB's rule or the statute—and explains why the differences exist. The supplementary information addresses concerns raised by commenters, and provides guidance on many questions raised. Since the Board does not plan at this time to issue an official commentary, the section-by-section description was drafted with the purpose of providing credit unions with necessary guidance. The Board notes that the FRB expects to issue an official commentary in late 1993. In light of TISA's mandate that NCUA's rule be "substantially similar" to the FRB's, it is the Board's intent that credit unions use the FRB's official commentary as guidance except on those issues or sections where the Board's rule differs from the FRB's. After the FRB's commentary is issued, the Board will evaluate the need to issue its own official commentary on credit union issues. Additional guidance may be obtained by calling or writing to NCUA's Office of General Counsel.

As previously stated, the Board received nearly 400 comment letters on proposed part 707. Although many commenters suggested that TISA and the regulation are unnecessary, and expressed concern about the cost and burden imposed by the regulation, a number provided useful information or asked significant questions. As a result, the Board has made several changes, both substantive and technical. The Board has also expanded the supplementary information to answer the most important questions or those most often asked.

In examining the proposal and the comments, the Board used several principles in fashioning the final rule. First, the Board has closely followed the provisions set forth by Congress in TISA, and the FRB's final regulation. In some cases, where statutory provisions simply elaborate on one basic requirement, the regulation contains only the basic requirement and the supplementary information includes the elaboration on that requirement. This was the approach taken by the FRB, and the Board agrees with the FRB that this approach provides a more concise regulation without losing the additional information that Congress wanted.

Second, the Board has attempted to write precise, simple rules to help ensure that credit unions understand TISA's requirements. The Board believes that this will minimize the possibility of errors and the potential for civil liability due to complicated or vague requirements. Exceptions to rules have been carefully considered and in several cases adopted in the final regulation. However, the Board is mindful that special rules add to the length, detail and complexity of the regulation. It has taken that fact into account, especially when considering suggestions for minor exceptions that would significantly increase the complexity of the rule.

Third, the Board has sought to ensure that the disclosures provided to members and potential members are clear and meaningful. The Board believes that providing overly complicated or technical disclosures to members and potential members provides little value in comparison shopping for accounts and may diminish the value of information given.

Fourth, the Board has sought to give credit unions the flexibility to minimize compliance costs. It has also tried to minimize the possibility that credit unions will unnecessarily reduce the variety of existing product choices offered to their members. Similarly, the Board has tried to ensure that the compliance requirements do not have the effect of limiting the development of new products.

Fifth, the Board has used its exception authority judiciously. The Board has made adjustments and exceptions to TISA, and changes from the FRB's rule, when essential to assist members and potential members in comparing accounts, to reflect the unique nature of credit unions and the limitations under which they may pay dividends, and to minimize significant compliance problems for credit unions.

In conjunction with the implementation of TISA, the Board is also amending §§ 701.35 and 740.2 of its regulations (12 CFR 701.35 and 740.2). Those sections were modified to conform to part 707. The amendments to those sections are also effective January 1, 1995.

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

Paragraph (b)—*Purpose*

This section mirrors the corresponding Regulation DD provision, except for the substitution of "members and potential members" for "consumer." NCUA believes that the term "consumer" is too broad to apply to credit union share accounts, which generally may only be offered to members and potential members within the credit union's limited field of membership.

Paragraph (c)—*Coverage*

The paragraph on coverage reflects the fact that TISA and the regulation cover all credit unions, whether federal or state-chartered and whether or not insured by the National Credit Union Share Insurance Fund (NCUSIF). TISA provides that NCUA shall prescribe regulations for credit unions that are substantially similar to those promulgated by the FRB.

Following both TISA and the FRB's rule, proposed part 707 provided that if advertisements for share and deposit accounts are placed by brokers and dealers who are share or deposit brokers, they are subject to the advertising rules set forth in § 707.8. NCUA solicited comment regarding whether share or deposit brokers are involved with placing funds into member accounts and on the necessity or desirability of including them in NCUA's rule. A majority of commenters who addressed this issue thought that share or deposit brokers should be covered, if they place funds in credit unions. The Board agrees, and the final rule retains language covering share or deposit brokers.

NCUA also solicited comment on whether an agent on an agented account could be considered a broker under the proposed rule. An example of an agented account that might be subject to the rule would be a member with a jumbo certificate account who subdivides interests in the member account for sale to other parties or among members who formed a certificate account investment club. Perhaps this could also happen with low-income designated credit unions which may accept consumer accounts from nonmembers. Only two comment letters addressed this issue; both said that agents should not be covered. However, since TISA applies to deposit brokers, the Board believes that an agent who falls within the definition of share or deposit broker should be subject to the rule.

Comment was also requested on whether the rule should apply to natural person accounts at corporate credit unions. The proposed rule included such accounts. Two thirds of the forty-three commenters who addressed this issue favored exempting corporate credit unions from the regulation. Some of these commenters suggested that corporates should be exempt if their only natural person members are those needed to charter or operate the credit union. The Board believes that such a limitation would be consistent with the purposes of TISA, i.e. information and protection for consumers.

Under part 704 of NCUA's Rules and Regulations (see 12 CFR 704.2, definition of "corporate credit union"), a corporate credit union must be so designated by NCUA and must limit its natural person members to the minimum required by state or federal law to charter and operate the credit union. The final rule incorporates the natural person member limitation by exempting only those credit unions designated as corporates by NCUA. Natural person accounts in a purported corporate credit union not designated by NCUA would be subject to the final rule.

Paragraph (d)—*Effect on State Laws*

Section 273 of TISA provides a narrow standard for preemption of state laws. To be preempted, a state law must be inconsistent with the "disclosure of yields payable or terms for accounts" provisions of TISA and the implementing provisions of the regulation. Based on numerous comments, the FRB expanded the scope of the preemption by Regulation DD to encompass anything inconsistent with the requirements of TISA and Regulation DD. NCUA proposed the same approach, but requested comment on whether the TISA standard or the Regulation DD standard should apply.

Approximately half of those who commented favored the Regulation DD standard proposed by the Board. A few commenters wanted a broader preemption standard; some of those wanted the Board to use the standard currently in § 701.35 (see below). A minority of commenters asked for a weaker standard or preferred that there be no preemption at all. The Board agrees with the FRB that inconsistent state laws are impliedly preempted by TISA, and that a narrow reading of the Board's preemption authority could lead to uncertainty about the status of state laws and potential civil liability and compliance concerns. Therefore, the final rule adopts the Regulation DD standard.

NCUA notes that the part 707 preemption is not as extensive as the preemption offered to FCUs through § 701.35(c) of the NCUA Rules and Regulations, discussed *infra*. NCUA proposes no special preemption request procedures. Preemption requests will continue to be processed as they always have been, by the requestor writing a detailed letter to the NCUA Office of General Counsel, citing the allegedly inconsistent state law, demonstrating the inconsistency and burden on credit unions, and requesting preemption. The General Counsel has delegated authority to opine on the preemption of the inconsistent state laws. 12 CFR 790.2(b)(8).

Section 707.2—Definitions

Paragraph (a)—*Account*

The wording of the first two sentences of this definition has been changed slightly in the final rule. The changes, which are not substantive, were intended to make the definition more understandable and to follow more closely the wording of the definition used in Regulation DD.

Covered accounts. Section 274(1) of the statute defines an account as any account offered to one or more individuals or an unincorporated nonbusiness association of individuals by a depository institution, into which a customer deposits funds, including demand accounts, savings accounts, time accounts, and negotiable order of withdrawal accounts. The Board is generally defining the term as any account available to, or held by, a member or potential member (which mirrors the definition of "member account" in the FCU Act, 12 USC 1752(5)). This definition includes share, share draft and term share accounts, and equivalent accounts offered by FISCUs and NICUs. The regulation covers dividend-bearing as well as nondividend-bearing and interest-bearing accounts. It includes all share and deposit accounts offered to members or potential members by credit unions, whether those accounts are federally (NCUSIF) insured, nonfederally insured, or uninsured.

Unincorporated nonbusiness association accounts. Like the FRB's, NCUA's final rule exempts any existing accounts held by unincorporated associations of natural persons, established before the effective date of part 707. The FRB adopted this position after a showing by commenters that to incorporate all such accounts into the coverage of the rule would mandate a manual review of all such accounts to determine their composition and purpose. Twenty-six commenters to NCUA's proposed rule agreed with the FRB's approach on the grounds of uniformity of all financial institutions and operational ease. Thirteen commenters favored including all unincorporated business association accounts, as it would be difficult to exclude some and not others, or to include new accounts by these groups, but not their older accounts, and expressed the belief that these are all covered accounts. Thirty-two commenters favored exempting all unincorporated business association accounts, because of operational difficulties in determining which accounts are associational (this information is not generally maintained and it would be difficult to make this determination, especially since civil liabilities apply if the credit union is wrong in making its determinations). No uniqueness reasons were given for these changes, so the NCUA Board has declined to adopt them.

The Board is authorized under section 269(a)(3) of TISA to create exceptions for classes of accounts to facilitate compliance with TISA. To ease the significant burden of reevaluating the ownership status of existing nonindividual member accounts, the Board is exercising its exception authority under section 269(a)(3) to exclude a limited class of existing accounts from coverage. Thus, the exemption discussed above. However, if the credit union is notified by an unincorporated nonbusiness association that an existing account is held by such entity, the exception will cease to apply and the account must thereafter be considered a member account which is covered by the regulation. Credit unions that are so notified must begin complying with the regulation within a reasonable time. For example, if the credit union is notified during a statement cycle or a compounding period that the accountholder fits the definition of member, commencing coverage at the beginning of the following statement cycle, dividend period, or compounding period would be acting within a reasonable time.

For purposes of determining coverage under this provision, credit unions may initially assume that existing accounts covered are those identified for tax purposes by an individual's social security number. Of course, even accounts identified with a social security number are not covered if they are for a business purpose, for example, an account held by a sole proprietor.

Credit unions must have procedures in place so that unincorporated nonbusiness associations that open new accounts on or after the effective date (or existing members that inform the credit union of their covered status) receive all applicable disclosures required to be provided: (1) At account opening and upon request; (2) on certain statements sent on the account; and (3) if terms are changed. Naturally, they will also be covered by all other provisions of the regulation (such as the dividend payment requirements).

Certificate of indebtedness accounts. The Board finds that certificate of indebtedness accounts offered by some credit unions are more akin to a debt offering than a share account, and are, therefore, not covered by this proposal. FCUs that borrow funds from natural persons, such as through a certificate of indebtedness account, must evidence the borrowing by a signed promissory note setting forth the terms and conditions regarding maturity, prepayment, interest rate, method of computation, and method of payment. 12 CFR 701.38(a)(1). Furthermore, the promissory note and any advertisement for such funds must contain conspicuous language indicating that the note represents money borrowed by the credit union, and that the note does not represent shares and, therefore, is *not* insured by the NCUSIF. 12 CFR 701.38(a)(2). Six commenters agreed with NCUA's proposal not to cover certificate of indebtedness accounts in the rule endorsing the Board's rationale. No commenters were opposed. Therefore, the Board adopts its proposed position. Since the Board finds that certificate of indebtedness accounts are neither share nor deposit accounts, it is not necessary to place this exemption into the rule language.

Other investments. The term "account" does not include every financial relationship a member might have with a credit union, or with the credit union's credit union service organization (CUSO). For example, the purchase of a U.S. savings bond, government security or annuity from a financial institution or its affiliates are not "accounts" subject to this regulation. The Board believes, as does the FRB, that the Congress did not intend to cover certain other investments that may be offered through (as opposed to offered by) a credit union, such as mutual funds. Often these investments are offered by affiliates of the credit union, such as by a CUSO, or group purchasing vendor. These investments are not member accounts of the credit union, and are thus not covered by the final regulation.

Paragraph (b)—*Advertisement*

Under TISA, each "advertisement, announcement, or solicitation" relating to an account at a depository institution must comply with specified rules. TISA does not define "advertisement," but Regulation DD does, using the same definition used in the FRB's Regulation Z, 12 CFR 226.2(a)(2). NCUA's proposed rule used, and the final rule retains, the FRB's definition of advertisement: "any commercial message appearing in any medium, if it directly or indirectly promotes the availability of an account."

NCUA solicited comments on how to treat rate sheets published in newspapers, periodicals or trade journals. All of the commenters who addressed this issue believed that rate sheets should not be covered by the rule, because they provide valuable information that members otherwise would not have, and subjecting them to the rule's advertising requirements would reduce the availability of such information. The Board agrees with the commenters. The FRB found that rate sheets are independent, third party compilations of information on the rates of many of an area's financial institutions, with no payment made by the institutions to the third party nor any duty by the third party to include information about a specific institution. With this understanding the Board has adopted the FRB's position on this issue, to the effect that rate sheets published in newspaper, periodicals, or trade journals are not advertisements as long as the credit union does not pay a fee to have the information included and does not control whether the information will be included. The Board believes that these types of rate sheets are not "commercial messages" of the type contemplated by the term "advertisement."

The Board also solicited comments on whether any advertising practices unique to credit unions (such as newsletters to members or election mailings), or limitations on dividend payments, would engender any changes to the proposed definition of advertisement. Commenters requested exemption of a broad spectrum of communications, ranging from newsletters to brochures. Five of the suggested items (published rate sheets, telephone response machines, broadcast and electronic media, lobby boards and outdoor advertising) are fully or partially exempt from the rule's advertising requirements. (See § 707.8(e)(1–2) and the supplementary information thereto.) The Board is also persuaded that newsletters are partially exempt from the rule's advertising requirements. (See § 707.8(e)(3) and the supplementary information thereto.) The Board does not believe that the other suggested items merit exemption either on uniqueness grounds or because or the limitations on dividends, and the final rule does not create any new exemptions for them.

Paragraph (c)—*Annual Percentage Yield*

The Board adopts a definition of the annual percentage yield ("APY") that is substantially the same as stated in TISA and Regulation DD. TISA defines annual percentage yield as the total amount of interest that would be received on a $100 deposit, based on the annual rate of interest and the frequency of compounding for a 365-day period, expressed as a percentage calculated by a method which shall be prescribed by the FRB in regulations. The final rule does not incorporate the reference to a $100 deposit, since the APY calculation prescribed by appendix A to this part can be performed with any amount of principal, and NCUA believes, as does the FRB, that reference to $100 might be confusing, especially for accounts that have a higher minimum balance requirement to earn dividends or that have a tiered-rate structure. The Board requires that the term "annual percentage yield" be used in both advertisements and disclosures to ensure uniformity and facilitate easy comparisons. The only difference from the definition in Regulation DD is that the word "dividends" is substituted for the word "interest."

Paragraph (d)—*Average Daily Balance Method*

This definition is adopted verbatim from the FRB's rule. Under the average daily balance method, dividends are computed by applying a periodic rate to the average daily balance in the account for the dividend period, or applicable portion of a dividend period, with the average daily balance calculated by adding the balance in the account for each day of the period, or applicable portion of a dividend period, and then dividing that sum by the number of days in the dividend period, or applicable portion of a dividend period. It should be noted that the FRB treats negative account balances as a $0 balance for calculation purposes. Furthermore, the FRB holds that if a fee is assessed in such circumstances (and is not part of a credit transaction), it should be disclosed as a fee—in the initial disclosures—and should not be treated as "negative" interest. NCUA follows this FRB guidance.

One commenter suggested combining this definition with that of daily balance, § 707.2(h), for ease of understanding. No uniqueness reasons were given for this change and the Board declines to adopt this suggestion.

Paragraph (f)—*Bonus*

TISA does not use or define the term "bonus." However, the definition of a "bonus" has significance under the proposal because a bonus is excluded from dividends and interest, and must be disclosed under proposed § 707.4(b)(7), and because mention of a bonus in an advertisement requires other disclosures to be made under proposed § 707.8(e).

The Board proposed to define the term "bonus" to encompass any premium, gift, award, or other consideration worth more than $10 regardless of the form the payment takes. Thus, it was intended that anything of over $10 in value that is given or offered to a member, aside from dividends, would be a bonus for the purposes of part 707. The Board followed the FRB in setting $10 as the line of demarcation for bonuses, following Internal Revenue Code section 6049 which excludes amounts under $10 from being reported as interest for tax purposes. 26 U.S.C. 6049. In addition, under the proposal an item could *not* be a bonus if a credit union gave or offered such a premium to a third party, rather than to the member. Comments were requested regarding the adoption of the FRB exclusion of third party benefits, whether life savings benefits should be treated as a bonus for part 707 purposes, and whether any other unique credit union attributes should be added to the definition. Life savings benefits are benefits provided by many credit unions to their members, at no charge to their membership, giving a death benefit to beneficiaries of a deceased member. It is a tradition of long standing in the credit union movement to provide this "burial insurance" free of charge to members. No application is necessary on the part of a member to obtain the life savings. It is NCUA's understanding that the terms of credit union life savings plans are unique from those offered by other institutions, and the Board so finds.

Twenty-five commenters to NCUA's proposed rule favored excluding life savings benefits because life savings benefits are unique to credit unions, benefits are paid only in limited circumstances, the value to each member is difficult to obtain actuarially, the IRS does not consider similar insurance on retirement accounts compensation, and payments are made to third party beneficiaries, not to the member. One commenter believed that life savings benefits should be included in the definition. Given the history, tradition, and uniqueness of credit union life savings benefits, and that they fall into a category of third party benefits, which are excluded from coverage by Regulation DD, the Board excludes life savings benefits from the definition of bonus. Those federally insured credit unions offering life savings benefits need only follow the requirements of part 740 of the NCUA Rules and Regulations in advertising life savings plans. 12 CFR part 740. Certain state laws may also apply, as with any insurance product. The Board also deems all life savings benefits to fall under the definition of "nondividend membership benefits" defined in § 707.2(r).

One trade association also favored excluding all items, awards or premiums provided to any third party. The FRB, in excluding all third party benefits, agreed with commenters noting that a true bonus is one given or offered to the consumer holding the account and that the disclosures applicable to bonuses are most important where the consumer, and not some third party, is the recipient of the financial benefit from the payment of a bonus. Therefore, the FRB held that an item of any value given or offered directly to a third party by a depository institution in exchange for a consumer opening or renewing an account with the institution is not a bonus. NCUA finds this position well reasoned and adopts it.

Clarifications were requested by commenters regarding travel club benefits and other hard to value benefits. These items fall under the term "nondividend membership benefits" and are discussed in this supplementary information under § 707.2(r).

Five commenters also favored excluding extraordinary dividends, commonly known as "bonus dividends" (in that they are sporadic in nature, difficult to value, and often depend upon account balances). As the FRB also exempted all interest from the coverage of bonuses, this exemption is a clarification of something other depository institutions are permitted under Regulation DD. Furthermore, it is unique to credit unions and specific to the dividend setting process. The Board also determined that "extraordinary dividends" should be excluded from the definition of "bonuses," and they are discussed in § 702.2(m).

It should also be noted that the Board agrees with, and therefore adopts, the positions of the FRB that a bonus does not include the payment of interest (or dividends) on an account, nor does it include the waiver or reduction of a fee, nor the absorption of expenses on an account. The credit union practices of packaged accounts, loan discounts for members with other account relationships, mortgage fee discounts, and fee waivers would all be exempt from the definition of bonus as either waivers and reductions of fees, or the absorption of expenses on accounts.

Deletion of Term "Business Day"

NCUA is concerned that many credit unions have no or minimal computer capabilities. Furthermore, a number of credit unions, particularly parish and church credit unions, may only be open one day each week (generally Sunday) for the transaction of routine business. NCUA attempted to arrive at a definition of business day that would take these unique conditions into account, not be overly burdensome to these credit unions, be fair to members, and still achieve the purposes of TISA. Comments were solicited on the advantages and disadvantages of each of the four alternatives proffered, as well as any other alternatives which would achieve agency goals.

Alternative one, defining a business day as one other than a Saturday, Sunday or legal holiday, is taken from the FRB's Regulation CC. Forty commenters favored this approach. Alternative two, defining a business day as one during which the offices of the credit union are open for carrying on substantially all business functions, is the one adopted by the FRB in Regulation Z and Regulation E. Sixty-six commenters favored this approach. Alternative three, defining a business day as any day in which the credit union is open which is not a Saturday, Sunday or federal or state holiday for credit unions is a combination of the other two definitions. Forty-six commenters favored this approach. Alternative four, defining a business day as one other than a Saturday, Sunday or a public holiday as noted in the U.S. Code, is the one adopted by the FRB for the final Regulation DD. Seventeen commenters favored this approach. The term "business day" only came into play in the delivery of account opening disclosures (ten business days when the member is not physically present at the time the account is opened). In all other circumstances, timing rules use calendar days.

One trade association supported either option 1 or 4, but favored allowing "parish" credit unions only open weekends, or credit unions entirely staffed by volunteers, to have twenty-one calendar days. Another trade association supported option 3, but favored allowing credit unions open less than three days/week to have twenty calendar days. Thirty credit unions favored calendar day, instead of business day, timing (10 days—23 commenters; 14 days—2 commenters; 15 days—2 commenters; 30 days—3 commenters). Four commenters suggested a blending of the various options. All of the commenters felt that their suggestion best aided credit unions operationally. One commenter each suggested exceptions for part-time branches; days credit unions were closed due to sponsor holiday, furlough, or plant closing; and shared branches. In light of the comments, the Board determined that the best solution to take into account the uniqueness of small credit unions, and also sponsor holidays, sponsor furloughs, sponsor plant closings, and shared branches, was to permit twenty calendar days for the timing for which the FRB uses ten business days. The Board believes this addresses the unique problems of credit unions, and yet permits sufficient time to process account opening disclosures.

Paragraph (g)—*Credit Union*

Section 272 of TISA directs the Board to issue regulations governing credit unions, for which it uses the definition in the Federal Reserve Act, 12 USC 448(b)(1)(A), specifically, all federal or state-chartered credit unions that are insured or are eligible to apply for insurance on their accounts from the NCUSIF. Based on that definition, the Board believes the statute's coverage is very broad, and encompasses both state and federally chartered credit unions, regardless of whether the credit union is insured (by federal, state, or private insurance) or uninsured. The final rule therefore adopts a very broad definition covering FCUs, FISCUs and NICUs.

Paragraph (h)—*Daily Balance Method*

This definition is adopted from the FRB's Regulation DD. Under the daily balance method, also commonly known as "day in/day out," dividends are computed by applying a periodic rate to the balance in the account for each day of the dividend period, or applicable portion of a dividend period. One commenter requested a clarification regarding whether this encompassed the "dividend dollar method." The "dividend dollar method" is not a term of art, nor does it have a universal meaning. Therefore, NCUA cannot respond to the commenter, except to suggest that the commenter make such determination himself or herself, based upon the given definition of daily balance method. NCUA does note that the daily balance method is equivalent to the "dollar value method" explained in § 5160.7.1 of the NCUA's *Accounting Manual for FCUs.* If the "dividend dollar method" is the same as the "dollar value method," then it is the equivalent of the daily balance method.

Paragraph (i)—*Dividend and Dividends*

Dividends are explained more fully earlier in section II, B of this Supplementary Information. The proposed definition, like the final, stated that bonuses and similar offers do not constitute dividends for purposes of the regulation. This is consistent with the FRB's definition of interest in Regulation DD. Two commenters favored the proposed definition; none opposed it. Also, a credit union's absorption of expenses incident to providing a normal member financial service function or its forbearance from charging a fee in connection with a service is not considered to be a payment of a dividend. One commenter requested clarification on the meaning of the phrase "absorption of expenses." The FRB provides guidance as follows: "A practice of charging higher fees to nonaccount holders than to account holders does not make the differential "interest" (or "dividends"). If a credit union does not pass along expenses or fees to a member, but instead pays for them itself as a part of a premium member account, or corporate account analysis, for instance, then such noncharging of expenses would be an "absorption of expenses." For more information on this topic, readers are referred to the supplementary information regarding § 707.2(f) on bonuses.

One trade association requested that the Board incorporate changes suggested to the definition of bonus, including an exclusion for all extraordinary dividends of any amount, and for nondividend membership benefits. The Board agreed with this commenter, and has provided exclusions of "extraordinary dividends" and "nondividend membership benefits" from the definition of dividends. These two terms are further explained in the supplementary information on §§ 707.2(f)("bonus"), (m) ("extraordinary dividends") and (r) ("nondividend membership benefits"). The Board bases these exclusions on uniqueness grounds and considers them a natural expansion on the FRB's exclusion of a bonus. The FRB, and NCUA, have excluded bonuses from the definition of interest (and dividends) on the grounds that valuation of a bonus would be burdensome and cause customer (and member) confusion. For more information on this point, readers are urged to review the discussion in this supplementary information on § 707.2(f) regarding bonuses.

Paragraph (j)—*Dividend Declaration Date*

This term was not defined, as it was not used, in the proposed rule. However, in response to comments, it seemed to the NCUA staff that a definition was needed to reflect the limitations under which dividends may be paid in reference to the account disclosures required in oral responses to inquiries under § 707.3(e), upon request to any member or potential member under § 707.4(a)(2)(ii)(A), in the account opening disclosures under § 707.4(b)(1)(i)(B), and for the time APY is in effect advertising disclosure in § 707.8(c)(2). The account disclosure available upon request, as proposed, required disclosure of a rate offered on dividend-bearing accounts accurate as of within the previous seven days. The advertising disclosure, as proposed, required either the period of time the APY would be offered, or a statement that the APY was accurate as of a specified date. Commenters made it clear to the Board that these disclosures were inaccurate and inappropriate to make in connection with a dividend-bearing account. For dividend-bearing accounts, the APY most comparable to that of interest-bearing accounts is the APY for that particular classification of account offered as of the last time dividends were officially declared. Therefore, as explained more fully in the discussion of §§ 707.4(a)(2)(ii)(A) and 707.8(c)(2) in this supplementary information, a need for a definition of "dividend declaration date" was occasioned.

The term "dividend declaration date" is defined simply as the date that the board of directors of a credit union declares a dividend for the preceding dividend period. As explained in section II, B of this supplementary information, it is this action which crystallizes the legality of the receipt of the dividend by the member. The Board cautions credit union members that a slight delay may occur between the declaration of a dividend, and the distribution of a dividend, as discussed in NCUA's *Accounting Manual for FCUs*, §§ 5160.1.2 and 5160.5. State laws would, of course, control timing in the case of state-chartered credit unions, but would not affect the necessity of the board declaring dividends. For example, section 927 of the California Credit Union Regulations permits the boards of directors of credit unions to declare dividends in advance. Cal. Admin. Code tit. 10, ch.3, subch. 3, section 927. Indeed, the boards of directors of FCUs may also prepare an anticipated dividend rate, to be ratified, or to take effect, at the end of a particular dividend period. See *Accounting Manual for FCUs*, § 5160.5.

Paragraph (k)—*Dividend Period*

This term is used in the definition of "dividend declaration date" in § 707.2(j); in the frequency of crediting account disclosure in § 707.4(b)(2)(i); and in the periodic statement disclosure to be made when the statement period and the crediting cycle, or dividend period, vary as described in § 707.6(a). This definition is adopted from the discussion of dividend periods in § 5160.1.1 of NCUA's *Accounting Manual for FCUs*. Comment was requested on whether the definition conforms to dividend periods for all credit unions, when it referred to the definitions of rollback accounts and disclosures, now deleted from part 707. However, NCUA uses the term "dividend period" in the same sense in both the proposed and final rules, and therefore builds upon the comments received.

Four commenters agreed with the proposed definition. One commenter suggested using "designated date" in lieu of "dividend period." As the suggested term had no meaning, the Board rejected this comment. One trade association suggested defining the term as "the span of time during which dividends are earned on shares on deposit and following which dividends are credited to shares on deposit." Another commenter suggested "the period of time the principal must remain on deposit to earn a dividend." Another trade association suggested "the span of time established by the board of directors of a credit union by the end of which shares on deposit earn dividend credit." These commenters stated that these changes reflected the practice of earning dividends from the beginning of the dividend period, but not crediting them until after the end of the dividend period. NCUA understands the importance of the intent of these changes, but finds that the proposed definition also reflects credit union practice. With one minor change to reflect credit union uniqueness, substituting "in a member account" for "on deposit," the Board adopts as final the definition contained in the proposed rule.

Paragraph (l)—*Dividend Rate*

Section 274(3) of the statute defines the "annual rate of interest" as the annualized rate of interest paid with respect to each compounding period, expressed as a percentage. The Board, following the FRB's lead, is simplifying the phrase and rewording the statutory definition to clarify that the "dividend rate" is the rate of dividends paid without regard to compounding, shown as an annual figure and expressed as a percentage. Two commenters suggested that the term "dividend rate" reflect a compounded rate. The Board, in rejecting this idea, notes that this would duplicate the definition of APY, as well as deviate from the FRB when no uniqueness grounds exist for the deviation.

Section 274(3) of TISA also provides that the interest rate may be referred to as the "annual percentage rate." Again following the FRB's lead, the Board requires that credit unions refer to this figure using the term "dividend rate" and permits credit unions to use the term "annual percentage rate" only in addition to the term "dividend rate" and only for account disclosures (not in advertisements).

The Board believes it is essential, in order to assist members in comparing accounts, to require the use of standardized terminology in this area. The Board believes, as do twenty-seven commenters, that it may be confusing for prospective accountholders to see the same figure labeled as the "dividend rate" in some advertisements and disclosures and as the "annual percentage rate" in others. Also, the term "annual percentage rate," as required to be disclosed under Regulation Z, is commonly understood by members to encompass the *total cost* of credit—including both interest *and other finance charges*. The Board, and the commenters, are concerned that member confusion may result if the term "annual percentage rate" is used to designate a dividend rate for the member's share account at a credit union, if the same terminology is used to designate a rate that includes both interest and, for example, points, for the member's mortgage loan with the same credit union. Since the potential for confusion is greatest in advertisements, the Board proposes to permit use of the term "annual percentage rate" only in the account disclosures and then only in addition to the term "dividend rate." In no case would a credit union be required to refer to the dividend rate as the annual percentage rate. The Board follows the FRB final Regulation DD in this matter.

One commenter requested that the Board permit the "dividend rate" to be abbreviated as "DR." The Board demurs on this issue until the FRB issues the official commentary to Regulation DD, due in early 1994. Another commenter suggested that the word "deposit" should be changed to "share balance" wherever it appears, to emphasize the uniqueness of credit union dividend-bearing accounts. The Board believes that the term "account" is to be preferred in this context, as it encompasses both dividend-bearing and interest-bearing accounts (for, under § 707.2(p), the definition of "dividend rate" also applies to state-chartered credit unions offering interest-bearing accounts as the "interest rate"). The only change made by the Board is one of internal referencing to conform "§ 707.4(b)(1)(A)" in the proposed rule to "§ 707.4(b)(1)(i)" in the final rule.

Paragraph (m)—*Extraordinary Dividends*

This term was not defined, as it was not used, in the proposed rule. However, in response to comments, it seemed to the NCUA staff that a definition was needed to reflect a unique credit union practice and to exempt that practice from the requirements of being disclosed as a bonus or included as a dividend or interest payment to members.

The term "extraordinary dividends" is defined simply as a nonrepetitive dividend paid at an irregular time from funds legally available for such distribution. The definition is loosely adopted from the definition of the term in *Black's Law Dictionary*. Although such dividends are more commonly known to the credit union movement as "bonus dividends," the Board feared member and credit union confusion with the definitions of "bonus" (§ 707.2(f)) and "dividend" (§ 707.2(i)) if that term were used. Instead, the Board turned to the legal definition for all such irregular, extra dividends declared by any board of directors empowered to declare dividends, i.e. "extraordinary dividends." The definition is intended to encompass all irregularly scheduled and declared dividends. The Board considers this a clarification of the policy, adopted from the FRB, that a bonus does not include the payment of interest (and therefore dividends) on an account. As extraordinary dividends are dividends, equivalent in this context to interest, they, too, are exempt from the definition of bonus, as discussed in this supplementary information under § 707.2(f). In addition, extraordinary dividends are unique to credit unions, sporadic in nature, difficult to value (as they are often tied to account balances as a percentage of shares held in a credit union), and a return on investment to members encouraged by the Board, when declared within the bounds of safety and soundness. For these reasons, the Board has specifically exempted them from being considered as either bonuses, interest or dividends in part 707. However, it does require that the dollar amount of any such dividends be disclosed on a periodic statement for the dividend period during which they are earned. See § 707.6(b)(2).

Paragraph (n)—*Fixed-Rate Account*

This term was added by the FRB in the final Regulation DD. The proposed rule uses it in § 707.4(b)(1)(i). The term includes all of those accounts not meeting the definition of a variable-rate account. The FRB defined this term as including all accounts in which the financial institution, by contract, gives at least 30 calendar days advance written notice of decreases in the interest rate. Thus, institutions offering fixed-rate accounts may change rates from time to time, but only if they provide advance written notice of rate decreases. (An increase in the rate would not require any notice.) In essence, considering the Board has adopted the same definition of variable-rate accounts as did the FRB, this discussion also holds true for credit unions offering fixed-rate accounts. Three commenters asked for a more specific definition. The Board believes this is unnecessary. In addition, the Board does not wish to convey a false impression regarding the ability of credit unions to contract for rates, which is contrary to the dividend setting process. The Board adopts the proposed definition, for the reasons given here, and refers readers to the discussion in the supplementary information under § 707.2(z)(variable-rate accounts).

Paragraph (o)—*Grace Period*

This definition does not refer to "in by the 10th" type accounts. The FRB uses grace period in a different context and the Board adopts the same term. All references to "in by the 10th" or rollback accounts have been deleted from the final rule, as the regulation bans rollbacks.

A grace period, if provided, must be disclosed under § 707.4(b)(6)(iv). In addition, a grace period may be important for purposes of § 707.5(b), dealing with the timing of disclosures for rollover term share accounts. A grace period is defined as a period after maturity of an automatically renewing term share account ("certificate account," in the proposal) during which the member may withdraw funds without being assessed a penalty. A credit union is free to use a grace period, but its use is not required. Except for the change in term from "certificate account" to "term share account," the Board adopts this definition as proposed.

Three commenters agreed with the definition. Two commenters suggested changing the term to "certificate grace period" to eliminate confusion between the term and rollback accounts, which are often called "grace period accounts." The elimination of the term "certificate account" obviated the need for this suggestion. One commenter suggested defining the term as "the period of time following the maturity of an automatically renewable fixed-rate account during which the funds may be withdrawn without penalty." No uniqueness reasons were given for this change, and the Board declines to accept it.

Paragraph (p)—*Interest*

The definition is adopted from the FRB's Regulation DD and the term "interest" is to be used only by those state-chartered credit unions that pay interest pursuant to state law. Unless otherwise noted, the term "interest" is to be substituted for "dividend" or "dividends" wherever those terms appear when a state-chartered credit union's interest-bearing accounts are in issue. For more information regarding this term, readers are referred to the supplementary information section on § 707.2(i) regarding dividends.

Like "dividend" and "dividends," "interest" is defined to exclude bonuses, reductions in fees, absorption of expenses, extraordinary dividends and nondividend membership benefits. Since holders of interest-bearing accounts in a state-chartered credit union are still credit union members, it is possible that they may obtain extraordinary dividends or nondividend membership benefits as those terms are defined in part 707. For more information regarding these new terms, NCUA directs readers to the supplementary information on § 707.2(f) (extraordinary dividends), (i) (dividend) and (m) (nondividend membership benefits).

Use of the term "interest" in the regulation is not meant to suggest that all credit unions may pay interest on their accounts. Federal credit unions and some state-chartered credit unions are prohibited from paying interest. NCUA research indicates that at least twenty-nine jurisdictions permit their state-chartered credit unions to accept deposit accounts—Alabama, Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Puerto Rico, Rhode Island, Texas, Utah, Vermont, Washington and Wisconsin. Comment was requested from credit unions in those states, and any other states permitting credit union deposit accounts, regarding the application of this rule to such accounts. Six commenters approved of the Board's proposal; two commenters opposed (without citing any uniqueness reasons). The Board adopts the proposed definition, as amended. NCUA also notes that the definition of interest in part 707 is different from that of the Internal Revenue Service (IRS). In 26 CFR 1.6049–5(a)(2), the IRS states that the fair market value of property received as interest or in lieu of cash payment of interest is "interest" for reporting purposes. NCUA strongly suggests that credit unions consult their own tax advisors, accountants or attorneys on all tax issues related to part 707.

Paragraph (q)—*Member*

The Board adopts this definition as proposed. A "member" is any individual or natural person within the field of membership of a credit union who is either elected to membership or meets applicable initiation criteria and who subscribes to the required shares of stock in the credit union. "Member" is a concept parallel to, but not identical to or interchangeable with, the term "consumer" as used in Regulation DD.

It is clear from TISA and its legislative history that the protections of TISA were intended to apply only to natural-person-member-purpose—and not business-purpose—accounts. For instance, section 262 of TISA cites, strengthening the ability of the consumer to make informed decisions regarding deposit accounts as among TISA's goals. Moreover, the statutory definition of an "account" in section 274(1) of TISA is expressly limited to those offered to 1 or more individuals or an unincorporated nonbusiness association of individuals. The definition of "member" in § 707.2(q) also incorporates a natural person nonmember holding an account in a credit union designated as low-income status under 12 CFR 701.32(d), or to whom such an account is offered, and a natural person nonmember holding an account in a state-chartered credit union pursuant to state law, or to whom such deposit account is offered. One trade association objected to inclusion of credit union nonmembers in the definition of member, and requested such mention be moved to the definition of "account" instead. The commenter feared that this might blur the distinction between members and nonmembers. The Board does not agree. The definition of member for purposes of part 707 only has meaning in part 707. It does not modify the definition of member in the FCU Act, nor any state law authorizing the chartering of credit unions. Given this fact, and the need to simplify a very technical law and avoid any unnecessary confusion among credit unions as to who must receive the benefits of TISA and part 707, the Board has not adopted this suggestion.

One commenter favored permitting exclusions based upon state law determinations of the nature of an account. The Board could not determine the meaning of this comment from information received, and demurs until more information is received and the FRB releases its Regulation DD official commentary.

The Board uses the term "natural person" rather than "individual" and adds the term "primarily for personal, family, or household purposes" to the definition. A similar definition has worked well in the FRB's Regulation Z in determining whether credit is for a consumer purpose, and the Board believes it would be equally helpful in determining coverage for deposit products. Two commenters favored specifically including living trust accounts; one commenter opposed the inclusion of living trust accounts. One commenter asked for a clarification regarding traditional "club" accounts, such as holiday share accounts. Whether an exemption would be available for living trust accounts and "club" accounts, would depend upon whether they are business purpose accounts, and thereby exempt, or primarily for personal, family, or household purposes, and thereby covered. In most instances, it would seem that they would be covered accounts. However, this is a determination that the Board could not make on a global basis, but that each credit union will need to make on a case-by-case basis. NCUA anticipates that the FRB's Regulation DD official commentary will be published soon, which should provide guidance on these issue for credit unions.

The Board also requested comment on whether sole proprietorship, custodial, retirement, escrow and Uniform Gift to Minors Act ("UGMA") accounts are consumer accounts subject to proposed part 707. The FRB concluded that: (1) Sole proprietorship and custodial accounts were business purpose accounts not subject to Regulation DD; (2) retirement and UGMA accounts were consumer accounts subject to Regulation DD; and (3) escrow accounts could be either business purpose or consumer purpose and had to be investigated to determine the applicability of Regulation DD to them. For example, an account established by an individual for lease payments pending resolution of a dispute with a landlord would be a consumer account, but an account established for the payment of taxes and property insurance in connection with a real estate transaction would not be a consumer account.

The Board stated that it was inclined to follow the lead of the FRB unless these accounts had characteristics unique to credit unions that would support another approach. Twenty-seven commenters approved of NCUA's proposed approach. The Board adopts this approach in the final rule definition, and follows the FRB determinations regarding sole proprietorship, custodial, retirement, UGMA and escrow accounts.

One commenter favored excluding guardianship, conservatorship, estate, probate, court-ordered, and all trust accounts, on the grounds that they are not consumer accounts. Twenty commenters favored excluding guardianship, conservatorship, estate, sole proprietorship, custodial, probate, court-ordered, trust, retirement, escrow and UGMA accounts on grounds that they are all business purpose accounts. Eight other commenters requested that all escrow accounts be excluded from rule coverage, believing them to be business purpose. One commenter favored including sole proprietorship, custodial, and small corporation accounts. As these positions varied from the FRB, and no uniqueness reasons were cited for a deviation, they have been rejected by the Board.

One commenter suggested that savings accounts of state deferred compensation plans be exempted. Since the government entity must remain the owner of the funds in such accounts for federal tax purposes, it appears that these are public unit accounts, and therefore exempt.

Three commenters requested a clarification on the exclusion for accounts held by a member in a professional capacity. Two commenters requested a clarification that trust, estate and court-ordered accounts be excluded due to their business purpose nature. The FRB has taken the position that it would be extremely burdensome and difficult for financial institutions in many cases to discover the identity of the person for whom an account is held. In addition, the value of requiring disclosures to be given to the custodian was questioned, insofar as beneficiaries often cannot control the investment decisions of a custodian, and often cannot comparison shop for accounts, one of the main purposes of TISA. Moreover, custodians are often in the business of being custodians, and are not the type of accountholder Congress intended to protect. Therefore, the FRB excluded from the coverage of Regulation DD, natural persons who, in their professional capacity, hold an account for another. The Board adopts this approach, and finds that it would cover persons holding trust, estate and court-ordered accounts in a professional capacity, and other accounts held in a professional capacity.

Another commenter requested a clarification regarding Individual Retirement Accounts (IRAs). The Board, like the FRB, believes such accounts are covered to the extent funds are invested in an "account" as defined by § 707.2(a). While IRAs technically are custodial accounts, they differ from typical custodial accounts. Unlike other custodial accounts, the customer (beneficiary) usually controls the investment decisions for an IRA. Furthermore, the credit union itself is the "custodian" rather than a third party acting on behalf of the member. The Board believes that members would benefit and be better able to comparison shop if disclosures were received for such accounts. Of course, the regulation does not apply to all products in which a consumer may invest IRA funds. For example, if a consumer invests in a product such as government securities, the regulation would not apply.

Paragraph (r)—*Nondividend Membership Benefits*

This term was not defined, as it was not used, in the proposed rule. However, in response to comments, it seemed to the NCUA staff that a definition was needed to reflect a unique credit union practice and to exempt that practice from the requirements of being disclosed as a bonus or included as a dividend or interest payment to members.

The term "nondividend membership benefits" is defined as any property or service provided by a credit union to its members, the nature of which makes its valuation unreasonable and administratively impracticable. The definition is loosely derived from the definition of "de minimus fringe benefits" in 26 U.S.C. 132(e), used by the IRS to define properties and services provided by an employer too difficult of estimation to be included as income to an employee, and therefore excluded from gross income. The IRS, in 26 CFR 1.132–6(e)(1), lists the following as benefits excludable from income: "Occasional cocktail parties, group meals, or picnics for employees and their guests; traditional birthday or holiday gifts of property (not cash) with a low fair market value; occasional theatre or sporting event tickets; coffee, doughnuts, and soft drinks; local telephone calls; and flowers, fruit, books or similar property provided to employees under special circumstances (e.g., on account of illness, outstanding performance, or family crisis)." At one time or another, credit unions have provided many, if not all, of these nondividend membership benefits to their members. It is a longstanding tradition unique to the credit union movement, that credit unions, as member cooperatives, treat their members more like employees or family, than merely depositors. NCUA finds, as have Congress and the IRS, that such benefits are difficult of valuation, improve morale, and are not granted in such a quantity as to be includable as interest or dividends. Similarly, the Board finds that travel club benefits, annual membership picnics or gatherings, refreshments at annual credit union meetings, refreshments available in credit union branches to members, door prizes awarded at annual meetings, grand opening raffles ("open an account today, get a chance at a trip") and similar benefits of credit union membership also fall under the definition of nondividend membership benefits. All of these practices are unique to credit unions, and exempted from treatment as bonuses, interest, or dividends by the Board. It should also be noted that benefits to third parties excluded from the definitions of bonus, dividends and interest by both NCUA and the FRB, such as life savings benefits discussed in the supplementary information regarding § 707.2(f)(bonuses), are also deemed nondividend membership benefits for purposes of this rule.

Paragraph (s)—*Passbook Account*

This term, taken from Regulation DD, is added because passbook accounts are excluded from the definition of the term periodic statement. These accounts are defined as an account in which the member retains a book or other document in which the credit union records transactions on the account. One commenter suggested redefining the term as "an interest-bearing account not evidenced by a certificate or similar document and for which transactions in the account are recorded on credit union records and the member is provided a book or other document in which to keep a record of account transactions." No uniqueness reasons were given for this change, and the Board has rejected the suggestion. This term was adopted by the Board as proposed.

Paragraph (t)—*Periodic Statement*

Neither TISA nor part 707 requires a credit union to provide periodic statements. Statement disclosures under § 707.6 are required to be included only if the credit union sends such statements.

This definition is adopted from the FRB's regulation. TISA does not define "periodic statement," although the term, or the similar term "account statement," is used in two provisions (sections 266 and 268). Section 266(e) of TISA (which requires a notice to be given to existing accountholders) refers to account statements provided on a *quarterly basis*. The FRB looked to that provision and to requirements in other regulations in defining periodic statement. For example, the FRB's Regulation E requires a periodic statement to be provided monthly if electronic transfers have taken place, but at least quarterly if no transfer has occurred. In addition, FRB's Regulation Z generally provides that periodic statements must be provided at the end of any billing cycle—which must be at least quarterly—for open-end credit accounts. The Board believes this approach has worked well and proposes to use the FRB's definition of periodic statement as one sent on a quarterly or more frequent basis.

An example of a periodic statement is a monthly statement for a share draft account which sets forth account information, such as a listing of transactions. On the other hand, regularly providing members with general service information which does not discuss specific transaction activity or other aspects of a particular member's account (for example, a quarterly newsletter describing services and other accounts) would not be considered a periodic statement.

The FRB excluded passbook accounts and time accounts from the definition of periodic statement. The FRB explained that commenters noted that consumers did not expect institutions to provide information on these types of accounts. In addition, bank and thrift commenters said that if they were required to provide such information they would stop providing information on combined statements (statements combining information on more than one account), due to the burden of calculating the rates, civil liability issues, and space and printing limitations. NCUA also finds these reasons sensible and adopts the FRB position in this regard. Seven commenters (including two national trade associations) agreed with the definition, and with the exclusion of passbook and term share accounts from the rule. One trade association also noted its support of the FRB amendment interpretations, which are also adopted by the Board and included in the rule and this supplementary information discussion. *See Regulation E interplay, Account balance information,* and *Use of "ledger" and "collected" balance to calculate the annual percentage yield earned,* below. One commenter also wanted the Board to exempt all regular share accounts from the rule, based on the equivalency of statement savings accounts to passbook accounts. No reasons were given for this change. One commenters argument that statement savings accounts are equivalent to passbook savings accounts was already rejected by the FRB. Therefore, the Board declines to incorporate this provision into the definition of periodic statement.

Regulation E interplay. The regulation defines a periodic statement as one sent to a member "on a regular basis of four or more times a year." The FRB initially stated that if an institution provided a statement to meet other legal requirements (for example, to comply with Regulation E), such a statement would be a "periodic statement" for purposes of Regulation DD. This position has been revised. 58 FR 15077, 15079–80, March 19, 1993.

Regulation E requires a statement to be sent for each monthly or shorter cycle in which an electronic fund transfer has occurred, but at least quarterly if no transfer has occurred. 12 CFR 205.9(b). The FRB proposed that if an institution provides regular quarterly statements, and in addition provides a monthly statement when a transfer has occurred (to comply with Regulation E), the monthly statement is not a periodic statement for Regulation DD purposes. 58 FR 271, January 5, 1993. FRB commenters supported the FRB's proposal stating that monthly statements are not sent on a "regular basis" if they are sent only when an electronic transfer occurs during the month. Some FRB commenters believed that institutions should not be precluded from treating Regulation E statements as periodic statements for purposes of Regulation DD. A number of banks and thrifts apparently were prepared to include the Regulation DD disclosures on the "interim" Regulation E statements they generate.

The Board believes, as does the FRB, that a flexible approach is desirable. Whether the interim statement is deemed a truth in savings regulation statement or not, consumers and members will receive full disclosures for all activity in the quarter. If the institution or credit union opts to make truth in savings regulation disclosures on the interim statement, all account holders benefit from receiving account information sooner rather than later. A flexible rule also minimizes the burden of compliance on institutions and credit unions that already have their programs in place, or have made substantial progress on such programs, and would otherwise be required to make significant revisions to their systems.

Therefore, the Board, consistent with the FRB's position, holds that credit unions that regularly provide quarterly statements need not, but may, treat any monthly Regulation E statements as periodic statements for part 707 purposes. For credit unions that choose not to do so, the quarterly statement must reflect the annual percentage yield earned and dividends (or interest, if applicable) earned for the full quarter. (Credit unions with differing statement and crediting cycles may use the special rule of § 707.6(b), discussed in the supplementary information under that section.) If a credit union chooses to provide dividend (or interest, if applicable) or rate information on these interim statements, however, the statement would be deemed a part 707 statement, and be subject to the periodic statement disclosure rules.

Credit unions that treat Regulation E statements as part 707 periodic statements must provide information for the period since the last statement was issued. For example, a credit union may issue quarterly periodic statements in March, June, September, and December. If the member initiates an electronic fund transfer in February, an interim statement would be provided. A credit union treating that February statement as a part 707 statement must reflect all dividends (or interest, if applicable) earned and an annual percentage yield earned for the period since the previous part 707 statement was issued in December. Disclosures of the dividends (or interest, if applicable) earned and the annual percentage yield earned on the next statement (March) would not repeat dividend (or interest, if applicable) information disclosed on the February statement. Thus, the March statement would only reflect dividends (or interest, if applicable) earned and an annual percentage yield earned for the month of March and would not repeat or aggregate such dividend (or interest, if applicable) information for the entire quarter. As the periodic statement disclosures are intended to provide the member with a "snapshot" of how much in dividends (or interest, if applicable) was earned during a specific period, the Board believes subsequent statements must not repeat or incorporate dividends (or interest, if applicable) earned or the annual percentage yield earned for previous periods that have already been disclosed.

The FRB also solicited comment on whether institutions should have to redisclose fees on a quarterly statement if the fees were reflected in a prior monthly statement to comply with Regulation E. Many bank and thrift commenters believed that fees disclosed in the monthly Regulation E statement should not be repeated in the quarterly periodic statement. These commenters were concerned that consumers might be confused if the same fees were disclosed twice—once for the month the fee was incurred and again on a quarterly statement.

For credit unions that issue a statement to comply with the requirements of Regulation E only, the Board agrees with the FRB position, that disclosing fees on the monthly statement is sufficient and that the same fees need not be redisclosed on the quarterly statement. Fees that a credit union voluntarily discloses on the interim Regulation E statements (for example, fees unrelated to electronic fund transfers, such as per check fees or stop payment fees), need not be redisclosed on the quarterly statement. On the other hand, if a credit union imposes such fees during the period and does not disclose them on the monthly statement, such fees must be reflected on the quarterly statement to meet the requirements of § 707.6.

Account balance information. The Board also adopts another revision made by the FRB regarding "status information" of accounts either not covered by truth in savings disclosures, or covered by other periodic statements on different statement cycles. After the September 1992 publication of the final Regulation DD, several FRB commenters raised this issue. Many banks and thrifts currently include on the periodic statement for one account "status information" for other accounts held at the same institution. For example, a monthly statement for a consumer's checking account may also provide the account number and balance of the consumer's savings account. In addition, a full periodic statement for the savings account is sent on a quarterly basis. FRB commenters stated that providing balance information on the periodic statement for another account serves several purposes. For example, if a minimum balance fee on a checking account depends upon the combined balance in a consumer's savings and checking accounts, balance information on the savings account helps the consumer understand that the fee was properly assessed. Balance information also enables consumers to monitor total deposits maintained at an institution. For example, an institution may include balance information for a money market deposit account (MMDA) on the monthly statement for a NOW account, even though the MMDA account also receives a monthly statement, but on a different cycle.

FRB commenters requested that institutions be allowed to provide the account number, type of account and balance information for one account (for example, a MMDA) on the periodic statement for another account without having to provide complete disclosures required by Regulation DD for the MMDA. Institutions stated that without such a rule they may stop providing balance information about other deposit accounts on periodic statements, due to the difficulty and costs associated with calculating an annual percentage yield earned for odd short periods, and the limited space available on periodic statements to provide such information.

In the final Regulation DD issued in September of 1992, the FRB recognized this problem, as well as the benefits of receiving secondary account information. The FRB's definition of periodic statement, as well as NCUA's proposed definition, exclude information about time (or term share) accounts and passbook accounts, so that institutions (and credit unions) could give information about such accounts without triggering the periodic statement disclosure rules. FRB commenters still believed, however, that the exemption from the definition of periodic statements should be broadened to allow balance information for an account that appears on the periodic statement of another account.

NCUA agrees with the FRB that there are significant reasons to allow institutions, and credit unions, to provide account balance information for one or more accounts on the periodic statement for another account, without triggering the duty to provide complete periodic statement disclosures. Thus, an institution, or credit union, may provide the account number, the type of account, and balance information for an account on a periodic statement given for another account. This rule may be used only to provide balance information for accounts that receive periodic statements. Under this interpretation, the consumer, and member, will always receive a regular statement with full truth in savings disclosures in addition to the balance information. For example, if an institution, or credit union, issues quarterly periodic statements for savings, or regular share, accounts, and monthly statements for MMDAs, disclosing balance information for the savings, or regular share, account and the MMDA on monthly share draft (checking) account statements will not trigger full periodic statement disclosures for the savings, or regular share, account or the MMDA on the monthly share draft (checking) account statements. However, providing information other than the balance in an account on the checking account statement (for example, the current interest or dividend rate being paid on the MMDA) would require the institution or credit union to give full disclosures for the MMDA on the share draft (checking) account statement. The proposed, and adopted, exemption for term share accounts and passbook accounts is unaffected by this rule.

Use of "Ledger" and "Collected" Balance to Calculate the Annual Percentage Yield Earned. NCUA, following the FRB's March 1993 amendment, permits credit unions that accrue dividends using the collected balance method to use either the ledger balance or the collected balance in determining the annual percentage yield earned. If a credit union accrues dividends using a ledger balance method, it would use the ledger balance to determine the annual percentage yield earned. Either method will produce very similar results in most cases, given the typically short interval between the deposit of an item and its collection. Moreover, since credit unions must describe whether they accrue dividends by using a ledger or a collected balance, members will have this information to compare institutions' interest (dividend) accrual policies. See § 707.4(b)(3)(iii). In addition, the interest (dividend) figure disclosed on the periodic statement will reflect whichever method an institution uses to accrue interest (dividends). Finally, the Board believes permitting the use of either a ledger or a collected balance to calculate the annual percentage yield earned will minimize compliance costs and burdens on credit unions, since many credit unions use the same data processing servicers as do other financial institutions.

Paragraph (u)—*Potential Member*

A potential member is a natural person eligible for membership in a credit union, who has not yet taken the steps necessary to make himself or herself a member. The Board adopts the definition it proposed without any changes.

One national trade association thought community development credit unions and state-chartered credit unions able to accept nonmember accounts under state law should also be able to give disclosures to nonmember accountholders. This is already provided for by the cross-reference back to the definition of "member" in the definition of "potential member." The definition of "member" in § 707.2(q) incorporates a natural person nonmember holding an account in a credit union designated of low-income status under 12 CFR 701.32(d), or to whom such an account is offered, and a natural person nonmember holding an account in a state-chartered credit union pursuant to state law, or to whom such account is offered.

Disclosure to ineligible nonmembers wastes the credit union's time and efforts, and does not promote TISA's purpose of comparison shopping. Thirty-six commenters supported this approach. Thirty-three commenters opposed this approach, based upon difficulties and cost in verifying field of membership status, and potential civil liability. The Board does not believe that it can be so difficult to identify potential members; if this were so credit unions would not have undergone the record growth sustained for the last several years.

Two commenters felt their civil liability should be limited for disclosures to potential members; one thought only rates should be provided to potential members; one believed that potential members must come in person to verify their status before receiving disclosures; one stated that credit unions should also be able to disclose to those in potential select employee groups (SEGs). In light of these comments, the Board is adopting the following interpretation. All credit unions should 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 it is the position of the Board that the credit union may first verify the membership eligibility of a potential member before sending account disclosures or other information to the potential member. However, the credit union must conduct this verification process quickly, in order to comply with the intent of TISA. As a guideline, it is the Board's understanding that a membership officer or membership committee of a credit union often can complete the verification of an eligible member's status, and make a recommendation for membership, within twenty days. The Board believes that twenty days is a reasonable time for a credit union to verify membership eligibility and provide disclosures to a potential member. (See related discussion of twenty day period under supplementary information for § 707.4(a)(2)(i).)

As an alternative, a credit union may, in its sole discretion, decide to provide such disclosures to individuals identifying themselves as potential members by treating them as disclosures to a nonmember under § 707.4(a)(1) and § 707.4(a)(2)(i). As such dissemination of such disclosures to nonmembers is entirely within the discretion of the board of directors of each credit union, it is the position of the Board that no civil liability could accrue to a credit union for not furnishing such information, at least under TISA and part 707 (although certain federal and state nondiscrimination laws may apply if a pattern of discrimination is found in the provision of such disclosures to nonmembers). No commenters favored disclosure to the general public.

Some disclosures, such as rate inquiry disclosures, must also be made to those within the field of membership. NCUA does not believe that credit unions need be burdened with providing account disclosures to the public not eligible for credit union membership, as these people cannot take advantage of any accounts or services offered by the credit union. However, disclosures may be made within the sole discretion of the board of directors of a credit union to nonmembers, as is discussed in the supplementary information to § 707.4(a)(2)(i). No commenters wanted credit union disclosures to be provided to the general public. However, some credit unions did ask for the ability to disseminate part 707 disclosures to nonmembers in the credit union's sole discretion. The amendment to § 707.4(a)(2)(i) permits such disseminations.

Deletion of Term "Rollback Account"

The proposal would have allowed credit unions to continue offering rollback (or "in-by-the-tenth") accounts. These accounts are not allowed under the final rule. See discussion under § 707.7(a)(1).

Paragraph (w)—*Stepped-Rate Account*

This definition is adopted from the FRB's Regulation DD; TISA defines "multiple rate" accounts, and authorizes the Board to adjust its general annual percentage yield disclosure rules to ensure that meaningful disclosures are provided for such accounts. Part 707 defines "stepped-rate" and "tiered-rate" accounts, both of which would be "multiple rate" accounts under the statute. While both accounts involve multiple rates, the characteristics of each have different implications for calculating and disclosing the annual percentage yield.

The Board defines stepped-rate accounts as those in which two or more dividend rates (known at the time the account is opened) will take effect in succeeding periods. An example of a stepped-rate account is a one-year share certificate in which a 5.00% dividend rate is paid for the first six months, and 5.50% for the second six months.

Thirty-seven commenters agreed with the proposed definition. Three commenters opposed this approach, feeling it would stifle account innovation, be impermissible under state law or apply to minimum balance accounts. The Board rejects these contentions as not based on uniqueness grounds.

Paragraph (x)—*Term Share Account*

The initial proposal defined, as an equivalent term, "share certificate accounts." Three commenters requested that the definition be changed to "time share account" to indicate its coverage of more than certificate accounts. The Board believes that this term is already a term of art in the real estate arena, and declined to use it in part 707 to eliminate possible member and credit union confusion. Three other commenters offered other names for the term, such as "account evidenced by a certificate," and "account governed by a single ownership agreement." The Board declined to adopt these proffered name changes as too cumbersome and inartful for easy use by the credit union movement. Internally, the phrase "term share account" was chosen as it closely parallels the FRB phrase "time account," while indicating the share account nature of these accounts in credit unions, and avoiding the problems of other suggested terms. It is also NCUA's understanding that "term deposit account" as opposed to "demand deposit account" is a common distinctive term in the financial institutions community. For these reasons, the new term, "term share account" was adopted by the Board. As a further revision, the definition closely borrows from the explanatory definition for the term "time account" given by the FRB in Regulation DD.

Therefore, this term has been added to provide a convenient reference term that includes both share certificates offered by credit unions accepting shares and time deposits offered by credit unions authorized to accept deposits. It is equivalent to the term "time account" as used by the FRB in Regulation DD. The term is necessary since the final regulation provides special rules for certain term share accounts (such as automatically renewable and non-automatically renewable share certificate accounts) and since term share accounts are exempt from the periodic statement rules. The FRB adopted their equivalent term, "time account," from the term "time deposit" under the FRB's Regulation D (12 CFR 204.2(c)(1)). The FRB used "time account" instead of "time deposit" to avoid confusion since time deposit, as used in Regulation D, has a broader meaning than that in Regulation DD. For example, a "time deposit" in Regulation D includes savings deposits, which do not fit the definition of "time account" in Regulation DD.

A term share account is defined as a share certificate, or interest-bearing certificate of deposit account, or other account with a definite maturity of at least seven days where a member generally does not have a right to make full or partial withdrawals from the account for six days after the account is opened, unless the account is subject to an early withdrawal penalty of at least seven days' dividends on amounts withdrawn, offered by a credit union to a member or potential member. The most common term share accounts are share certificate accounts, but some types of "club" accounts (such as "holiday club" or "vacation club" accounts) may be covered where members, under the terms of the account, are unable to withdraw funds until a certain number of periodic accretions are made, even though accretions may be made within six days before the end of the period.

The Board recognizes that Regulation D permits withdrawals without penalty during the first six days after a time deposit is opened under limited circumstances, such as upon the death of any owner of the deposited funds or within a "grace period" for automatically renewable certificate accounts. Accounts that permit withdrawals of funds in accordance with those provisions of Regulation D remain term share accounts for purposes of part 707.

Paragraph (y)—*Tiered-Rate Account*

This definition is adopted from Regulation DD; the Board proposes to define tiered-rate accounts as those in which two or more dividend rates are paid on the account and are determined by reference to a specified balance level. An example of a tiered-rate account is one in which an institution pays a 5.00% dividend rate on balances below $1,000, and 5.50% on balances $1,000 and above. Included in this definition are two types of tiered accounts (sometimes referred to as "pure" or "split-rate" tiered-rate accounts and "hybrid" or "plateau" tiered-rate accounts) which are described more completely in appendix A, Part I, (D). Forty commenters agreed with this approach.

The FRB stated that accounts with minimum balance requirements are not tiered-rate accounts, but a single rate account with a minimum balance requirement. NCUA finds this opinion well reasoned, and adopts this position in the final rule. Forty-two commenters agreed with NCUA and the FRB that minimum balance accounts are not tiered rate accounts, but single rate accounts with a minimum balance requirement. One commenter opposed the approach, suggesting that it would stifle account innovation. As there was no uniqueness rationale given for this position, it has been rejected by the Board.

Another commenter requested a clarification regarding whether 0% was a tier. It is not. If dividends (or interest, if applicable) are not paid on amounts below a specified balance level, the account has a minimum balance requirement (required to be disclosed under § 707.4(b)(3)(i)), but the account does not thereby constitute a tiered-rate account. For example, an account that does not pay any dividends on account balances of less than $1,000, but pays a 5.50% dividend (or interest, if applicable) rate on account balances of $1,000 or more is not a tiered-rate account, but rather is a single rate account with a minimum balance of $1,000 required to earn the specified annual percentage yield.

Paragraph (z)—*Variable-Rate Account*

Variable-rate accounts require special disclosures in account opening disclosures and advertisements, however, variable-rate accounts are exempt from certain change in terms notices. NCUA proposed three options for this definition. The alternatives, with the number of commenters supporting each, are: (1) Accounts tied to an index (fifteen commenters; these also wanted a clarification and broad definition for index); (2) accounts not requiring a 30-day advance written notice of rate changes (seventy-four commenters; for consistency's sake, this being the option the FRB chose); and (3) all dividend-bearing share and share draft accounts (ninety-nine commenters; these commenters felt this option most closely fit with the dividend setting process, avoided costly mailings, and that option 2 was impermissible since credit unions can not guarantee rates, even for 30 days, and that 30 days would have a negative impact on credit union dividend flexibility). Four commenters suggested a blending of the definitions, or granting the option of defining the term to each credit union using one of the options. Several commenters also wanted to include term share accounts in this definition, to cover share certificates where the rates may be reset periodically at the option of the member. Other commenters requested that FISCU interest-bearing accounts be treated as in Reg DD.

TISA does not define variable-rate accounts, but section 265 of TISA authorizes the Board to adjust its annual percentage yield disclosure rules for such accounts. The legislative history accompanying the law also indicates that modifications to TISA's advance notice requirement for changes in terms were contemplated for variable-rate accounts (see discussion of proposed § 707.5 below). The Board requested comment on how variable-rate accounts might best be defined to further the purposes of TISA. As noted above, three alternative definitions were included in the proposed regulation: A narrow one that tied rate changes to an index (Alternative one), a broad one that encompassed any account agreement allowing rate changes where the credit union did not commit itself to giving at least 30 days' advance notice of the change (Alternative two), and the broadest one, which deemed all share and share draft accounts to be variable-rate (Alternative three).

Classifying an account as a "variable-rate" affects credit unions in three ways: (1) additional account disclosures for those accounts in § 707.4(b)(1)(ii); (2) rate decreases are exempted from the change in terms requirements (see the discussion of changes in terms in § 707.5(a)(2)(i)); and (3) a notice is required in advertisements under § 707.8(c)(1).

Many commenters expressed their views on the proposal. Fifteen commenters supported Alternative one, the narrow definition linking rate changes on an account to changes in an index. These commenters preferred a standard that paralleled Regulation Z's definition of variable-rates for open-end credit to an expansive definition which they believed to be too broad. However, this alternative did not agree with the current practices of most credit unions, which set rates based on a variety of factors and do not tie changes to an identifiable index. Therefore, the Board rejected alternative one.

Seventy-four commenters, including two national trade associations, preferred Alternative two, which was adopted by the FRB in Regulation DD. This option, which the Board has adopted in the final rule, treats as fixed-rate accounts for which the credit union contracts to provide at least a 30-day advance written notice of rate changes. This definition provides a way for credit unions that prefer to offer—and members who prefer to hold—"fixed-rate" accounts to do so, while providing the advance notice the Congress intended. In other cases, where the credit union does not commit itself to a 30-day notice, the accounts would be variable-rate accounts, and would not require advance notice when rates changed. For those accounts on which the credit union does not commit to advance notice of at least 30 days, it would be required to give full disclosure of the variable-rate feature when the accounts are opened (under § 707.4(b)(1)(ii)).

Ninety-nine commenters preferred Alternative three, which would have applied only to dividend-bearing share and share draft accounts, and would deem all such accounts to be variable-rate by nature of the dividend-setting process. Though the Board initially regarded this alternative as reflecting the actual process of setting and declaring dividends, which is always within the discretion of each credit union's board of directors and subject to change depending upon available current and undivided earnings and required reserve transfers at the end of a dividend period, this method has been determined to be unnecessarily preemptive of a credit union's ability to set the conditions of its accounts. Given the fact that credit union share and share draft accounts are by their very nature variable-rate accounts, NCUA recommends that credit unions select the variable-rate option for these accounts under the final rule standards (by including the variable-rate disclosures of § 707.4(b)(1)(ii)). Of course, that suggestion would not hold for interest-bearing credit union accounts in state-chartered credit unions.

The Board chose Alternative two for the reasons stated above and below. The Board agreed with the majority of commenters preferring a broader definition than that of an account tied to an index, based on both competitive and safety and soundness concerns. Some of the commenters also stated that without a broad definition members would be hurt since credit unions would keep rates lower than they otherwise might, either to avoid the cost of sending advance notices if the rate had to be lowered or to guard against having to send notices because of unanticipated fluctuations in the financial marketplace. Many of these commenters were concerned that advance notice requirements would restrict their ability to deal with competitive factors and other investment options available to members such as money market mutual funds, which are not covered by TISA and part 707, nor Regulation DD. Additionally, some commenters were concerned that tying changes to an index—internal or external—would inhibit a credit union's ability to respond appropriately to volatility in obtaining funds and to manage the liability side of the credit union's balance sheet. Others were legitimately concerned about the cost of sending notices on accounts that may change rates as frequently as daily or weekly and the annoyance to members of receiving a constant deluge of notices about changes they already know can occur on their accounts. Still others were concerned that deeming all share and share draft accounts variable-rate would limit the credit union's ability to structure accounts to meet member needs for fixed-rate accounts and result in an unwarranted governmental interference.

In the proposal, the Board discussed its concern that if credit unions reserve the right to change rates on accounts, but seldom do, members would view these accounts essentially as fixed-rate accounts. Many commenters bolstered the Board's decision by pointing out that account disclosures for variable-rate features required by § 707.4(b)(1)(ii) will alert members to the fact that the rates may change and the circumstances for such changes. In the same vein, they suggested that members can always contact the credit union to get current rate information. (See § 707.3(e) and § 707.4(a)(2) regarding responses to oral inquiries and providing disclosure of account terms upon request.)

The Board believes that a narrow definition of "variable-rate account" would require a substantial change in how credit unions price and structure their accounts, a change that was not intended by the disclosure provisions of TISA. Also, members would be harmed if credit unions offered artificially low rates to avoid repeated and expensive mailings. Thus, the final rule broadly defines a variable-rate account as one in which the dividend rate may change after the account is opened, unless the credit union commits to give at least 30 calendar days' advance written notice of rate decreases. An account meets this definition whether the change is determined by reference to an index, by use of a formula, or merely at the discretion of the credit union. A term share account, such as a share certificate, that permits one or more rate adjustments at the member's option is a variable-rate term share account.

For credit unions that prefer to offer—and members who prefer to hold—fixed-rate accounts, the regulation excludes from the definition of variable-rate those accounts where the credit union agrees to provide at least a 30-day advance written notice of rate decreases. (See paragraph (n) of this section.) Of course, this promise is not legally binding on the credit union in the event that there are insufficient available income and earnings to pay the dividend. See section II,B of this supplementary information, regarding limitations on payment of dividends.

Section 707.3—General Disclosure Requirements

Paragraph (a)—*Form*

Section 264 of TISA requires credit unions to maintain a written schedule of fees, dividend rates and other terms applicable to each class of accounts offered by the credit union. The statute requires the disclosures to be written in "clear and plain language." The regulation requires information to be disclosed "clearly and conspicuously," the standard required by the FRB's Regulation DD and other consumer regulations, such as Regulation Z. The Board believes that use of a commonly used and understood standard facilitates compliance with the law and carries out TISA's requirement that disclosures be written in clear and plain language. For uniformity, the format requirement of "clear and conspicuous" would apply to all disclosures provided to members or potential members, including the change in terms notice and information given on periodic statements, and not just the account opening disclosures. The final rule requires that disclosures be provided in a form the member or potential member can retain, since that seems to be clearly what the Congress intended in order to facilitate comparison shopping. Disclosures need be made only as applicable. Therefore, disclosures for nondividend-bearing accounts would not include disclosure of an annual percentage yield, dividend rate, or any other disclosures that pertain to dividend calculations.

Design requirements. The final regulation provides credit unions with flexibility in designing the disclosures, so long as the information is presented in a format that allows members and potential members to readily understand the terms of their own accounts. The final rule provides flexibility regarding the order of disclosures, the use of multiple documents for accounts, the use of documents that describe more than one account, and the combination of disclosures with contract terms and with disclosures required by other regulations (such as Regulation E and Regulation CC.)

The regulation does not require the disclosures to be provided in any particular order or segregated from other disclosures or account terms. The disclosures required by the regulation may be made on more than one page and may use both the front and reverse sides. For example, periodic statements may consist of several pages, depending on the member's account activity. Credit unions could use inserts to a document or fill in blanks to show current rates. Since rates may change on a frequent basis and rate information needs to be current, the Board believes that requiring such information to be preprinted in a document could impose substantial costs and burdens on credit unions, with no particular benefit to members or potential members.

In designing the account disclosures, credit unions have several alternatives. Credit unions could prepare a single document that contains disclosures for all accounts offered, or prepare different documents for different types of accounts. For example, credit unions may provide a single document for all covered accounts offered, such as share, share draft and term share accounts. Credit unions may provide disclosures for each type of account, such as a document that describes all certificate accounts offered. The regulation also would permit credit unions to provide disclosures describing a single account product; for example, a credit union offering three different share draft accounts may provide a separate document for each account. In all of these situations, the regulation permits credit unions to include in the document containing the account disclosures contract terms and other disclosures that relate to the account, such as disclosures required by Regulation E on electronic funds transfers or by Regulation CC (12 CFR part 229), which implements the EFAA. However, in the above instances, if more than one document is used for a single account (or if more than one account is described in a credit union's brochure), members and potential members must be able to understand from the several documents (or multiple account disclosures) which terms apply to their particular account.

Credit unions could comply with the regulation by providing members and potential members with disclosures contained in documents such as the signature card, credit union rate sheets, fee schedules, and brochures that describe other terms of the account. However, if the disclosures consist of more than one document, all relevant documents must be provided at the same time, and it must be clear to which account each document relates. For example, the regulation would not permit a member service representative to hand a member or potential member a brochure that describes some terms of the account when an account is opened and mail a rate sheet and fee schedule at a later time. Disclosures must be in a form the member may retain. Thus, for example, disclosures could not be made on a signature card if the member is not given a copy to keep.

Credit unions may choose to prepare a single document or brochure that contains disclosures for all accounts offered, or prepare different documents. For example, a credit union may provide one brochure for all of its transaction accounts, such as share draft and demand deposit accounts. A credit union may provide disclosures for each type of account, such as a document that describes all term share accounts offered. If the credit union chooses to provide one document for several accounts, the member or potential member must be able to understand clearly which disclosures apply to his account. Thus, if a credit union offers two share draft accounts ("A" and "B") with some fees applicable to both accounts, certain fees and rates unique to the "A" account, and other fees and rates unique to the "B" account, the disclosures must make clear (by the use of headings or some other means) which fees and rates apply to which account. Finally, the regulation permits credit unions to provide individual disclosures describing a single account product, for example, a credit union may provide a separate document for each account.

Disclosures need be made only as applicable. For example, disclosures for nondividend-bearing accounts need not include disclosure of an annual percentage yield, dividend rate, or any other disclosures required under the regulation that pertain to dividend calculations.

Format requirements. The regulation does not require any particular type size or typeface, nor does it require any term to be stated more conspicuously than any other term in the account disclosures. Sections 707.4(b), 707.6(a) and 707.8 require the annual percentage yield (and, in some cases, the dividend rate) to be so labeled in account disclosures, statements and advertisements. Apart from this, there is no required terminology. Credit unions must be consistent in the use of a term whenever the term is required to be disclosed. For example, if a credit union identifies a monthly fee imposed regardless of a member's balance or activity in the account disclosures as a "service" fee, a "maintenance" fee, or a "monthly" fee, it must use the same term in its periodic statements and change-in-term notices. Some commenters requested guidance on the use of abbreviations. See the supplementary information regarding § 707.2(l) on dividend rate and § 707.8(b) on advertisement of "APY."

Paragraph (b)—*General*

The final rule, like the proposal, includes a provision requiring disclosures to reflect the legal obligation between the parties in order to provide guidance about the basis for disclosures; this parallels the standard used in Regulation Z. This provision does not impose any contract terms or supplant state or other laws that define how the legal obligation between a member and a credit union is determined (for example, whether a written contract is required or whether disclosures may act as the basis for the obligation). The regulation requires the disclosures to reflect the terms of the legal obligation that exists once the member opens the account.

The FRB concluded in the final Regulation DD that disclosures must be based upon initial account terms, and not on terms that may apply if the account is renewed. Thus, if a credit union offers a six-month certificate account at an initial annual percentage yield of 4.00% with a guaranteed renewal at an annual percentage yield of 5.00%, the credit union would not disclose the account as a one-year stepped-rate account. Similarly, the fact that the rate may change on a fixed-rate term share account at renewal does not make it a variable-rate account. The Board also adopts this position.

Furthermore, the FRB in the final Regulation DD concluded that estimates complicate the disclosure scheme without providing attendant benefits to members, and therefore, prohibited the use of estimates. In addition, the FRB found that a rule on estimates was not needed because virtually all of the information required to be disclosed is within the total control of the credit union. The Board agrees with, and adopts, this interpretation as well.

The proposal followed Regulation DD in not setting special requirements regarding the making of disclosures in a foreign language as well as in English. The Board requested comments on whether foreign language disclosures need be required for credit unions. Commenters unanimously rejected the concept of required foreign language disclosures, arguing that credit unions will provide whatever their members need. Many credit unions currently reach out to the communities they serve by offering disclosures in languages other than English, where appropriate. The final rule does not require foreign language disclosures. The Board believes that adoption of this provision will promote delivery of more useful information to members and potential members.

Paragraph (c)—*Relation to Regulation E (12 CFR part 205)*

The final regulation permits credit unions to fulfill their part 707 requirements with disclosures that also satisfy the requirements of the FRB's Regulation E. If a credit union is required to provide information pursuant to Regulation E, such as a fee related to an electronic fund transfer, disclosures given pursuant to Regulation E will be deemed to comply with part 707 as long as given at the same time as other part 707 disclosures. Similarly, if a credit union changes a term that triggers a change in a term notice under Regulation E (as well as under part 707), the credit union may use the timing rules set forth in Regulation E for sending the notice to affected members. For further discussion on this issue, refer to the supplementary information on the definition of periodic statement, 707.2(t), the disclosures of fees, 707.4(b)(4), and the disclosures on transaction limitations, 707.4(b)(5).

Paragraph (d)—*Multiple Members*

The final rule provides that, in the case of an account held by more than one member, credit unions may provide the account disclosures to any member who holds the account. In the case of a joint account in an FCU, this could be a noncredit union member since the FCU Act allows for members to have joint accounts with nonmembers. Similarly, if the account is held by a group or organization, the credit union may provide the disclosures to any one individual who represents or acts on behalf of the group. Some FRB commenters requested that the FRB identify and designate a "primary account owner," such as the consumer whose tax identification number is assigned to the account, to receive disclosures. The FRB believes that requiring disclosures to a "primary account owner" would add an unnecessary compliance burden, and therefore declined to add it to Regulation DD. Other FRB commenters were concerned that accounts "held" by multiple consumers implied that only account holders with ownership interests in the account could receive disclosures. The FRB believes that where there are multiple consumer account holders, delivery to any account holder or an agent authorized by the account holder satisfies this paragraph. The Board adopts both of these positions with respect to credit unions.

Paragraph (e)—*Oral Responses to Inquiries*

This section has no counterpart in TISA. However, the FRB included it in Regulation DD, and the Board proposed to include it in part 707 for the same reasons cited by the FRB. Since members may call credit unions to obtain rate information, the Board believes that it is important for uniformity and comparison shopping that any rates quoted be stated as an annual percentage yield. The final regulation, like the proposed, would also permit credit unions to state the dividend rate, but would prohibit any other rate. A similar approach is used in Regulation Z. This section is not intended to impose a duty upon credit unions to provide responses to oral inquiries, nor would a response trigger the advertising disclosures of § 707.8.

Under the proposal, a credit union responding orally to a request for rate information was required to state disclosures on the nature of dividends (for dividend bearing accounts) and for rollback accounts and accounts for which dividends are calculated on increments of par value, as applicable. These additional provisions were not in TISA or Regulation DD, but were added by NCUA in order to cover unique credit union characteristics and practices.

The Board sought comment on the proposed oral disclosures and alternatives thereto. Commenters were generally opposed to the proposed oral disclosure requirements. They were concerned that the proposed disclosures would interfere with their ability to effectively communicate with members; would not provide a service to members, would confuse them, or would be a waste of time; and/or would be redundant. Several cited the burden on staff or finances that the disclosures would engender. Others thought that compliance would be difficult to enforce, and/or were worried about potential civil liability for an error in oral disclosures. Many commenters asked that the Board delete the requirements for oral responses. A number argued that the proposal is beyond the scope of TISA and/or NCUA's authority.

The Board believes that the oral disclosure requirements are both necessary and within its authority, for two reasons. First, the relevant section was adopted from the FRB's rule, to which part 707 must, under the terms of TISA, be substantially similar. Second, the Board believes that standardized oral responses to oral inquiries are necessary to fulfill TISA's purpose of enabling consumers to compare accounts at all institutions and make informed decisions. Therefore, the final rule retains the section on oral responses to inquiries.

The final rule eliminates the proposed oral disclosure on the nature of dividends, i.e. that dividends can not be guaranteed. The largest number of comments on the issue of oral responses opposed this disclosure. In addition to the general concerns listed above (cost, difficulty, civil liability), the commenters said that the disclosure on the nature of dividends would unduly alarm members. The Board thinks that those concerns are well founded, and is especially persuaded by the difficulty of orally explaining the nature of dividends, and by the possibility of civil liability for mistakes in the disclosure. The Board notes that credit unions will still be required to include a more complete explanation of the nature of dividends in their written disclosures.

As discussed elsewhere in the supplementary information (see discussion of § 707.7(a)(1)), the final rule bans rollback accounts and par value calculations. Rollback and par value disclosures are, therefore, unnecessary, and the requirements for such disclosures have been eliminated in the final rule.

Disclosure of dividend rate and annual percentage yield. The final rule also differs from the proposal in that it provides for different dividend rate and annual percentage yield disclosures for different classes of accounts. Identical changes have been made to § 707.4(a)(2)(ii) (disclosures on request). Similar changes have been made to § 707.4(b)(1)(i) (content of account disclosures) and to § 707.8(c)(2) (advertising).

For dividend-bearing accounts other than term share accounts, a credit union would specify the dividend rate and annual percentage yield as of the last dividend declaration date. (A credit union may identify these as the rates "as of the last dividend declaration date" or as the rates "as of ________" (e.g. January 1, 1994), inserting the last dividend declaration date in the blank.) If the dividend rate and annual percentage yield as of the last dividend declaration date might be inaccurate due to known or contemplated dividend rate changes, the credit union may instead disclose a prospective dividend rate and annual percentage yield. The credit union also has the option of disclosing both the dividend rate and annual percentage yield as of the last dividend declaration date *and* a prospective dividend rate and annual percentage yield.

For interest-bearing accounts and for dividend-bearing term share accounts, a credit union would specify the interest (dividend) rate and annual percentage yield offered during the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and give a number for members to call for current rate information. The treatment of interest-bearing accounts is taken from Regulation DD. For the reasons discussed below, the Board has treated dividend-bearing term share accounts the same way as interest-bearing accounts.

The proposed rule did not differentiate between dividend-bearing and interest-bearing accounts in prescribing oral responses to requests for rate information. Based on comments received, and in light of the limitations on payment of dividends, the Board decided that different disclosures were needed for dividend-bearing and interest-bearing accounts. The Board has also determined that term share accounts should be treated like interest-bearing accounts, rather than other dividend accounts, with regard to disclosure of the divided rate and annual percentage yield. The Board's findings in this regard are based on comments received, and on the legislative history of the FCU Act.

Term share accounts. In reviewing the legislative history of the authority of credit unions to offer term share accounts, including share certificate accounts, the Board realized that it is more in keeping with the spirit and intent of TISA to disclose dividend rates and annual percentage yields on term share accounts as contract rates, rather than than as rates subject to future action by a board of directors.

Before 1970, FCUs did not have the authority to issue share certificates of deposit. In the act establishing the NCUSIF and a system of federal share insurance, Congress also granted FCUs share certificate authority. Act of Oct. 19, 1970, Public Law 91–468, 2 and 10, 84 Stat. 994 (1970) (codified at 12 USC 1752(5) (definition of "member account") and 1757(6) (authority to receive accounts from members) (1993)) (1970 Act). The legislative history to the 1970 Act is sparse, but does state that "[t]he committee intends that this definition [of "member account"] shall include any and all types of credit union accounts in which the savings of a credit union's members may be deposited." H.R. Rep. No. 1457, 91st Cong., 2nd Sess. (1970), *reprinted in* 1970 U.S. Code Cong. & Ad. News 4166, 4172.

The Housing and Community Development Act of 1974 (1974 Act) amended, among other laws, 117 of the FCU Act regarding dividends. 1974 Act, Public Law No. 93–383, 725, 88 Stat. 633 (1974) (codified at 12 USC 1763). The 1974 Act liberalized the timing and authority for FCUs to declare dividends on credit union accounts. Congress permitted FCUs to declare dividends "at such intervals as the board of directors may authorize" in lieu of the previous requirement that dividends be declared "annually, semiannually, or quarterly, as the bylaws may provide." *Id.* Congress also allowed FCUs boards of directors to determine when dividend credit could be accrued, as opposed to the previous requirement that dividend credit for a month may be accrued on shares which are or become fully paid up during the first ten days of that month.

In 1977 Congress further "modernized" the FCU Act, by providing more flexibility for FCU certificate accounts. Act of April 19, 1977, Public Law No. 95–22, 303, 305, 308–310, 91 Stat. 49, 51–53 (1977) (codified at 12 USC 1752, 1757, 1761b, and 1763) (1977 Act). Congress, in the 1977 Act, recognized the nature of share certificates in authorizing FCUs to issue "*share certificates which may be issued at varying dividend rates and maturities, subject to such terms, rates, and conditions as may be established by the board of directors*, within limitations prescribed by the Administrator." 1974 Act, 303 (emphasis added), codified at 12 USC 1757(6). The 1977 Act also revised the dividend section of the FCU Act, 117, to read as follows: "At such intervals as the board of directors may authorize, and after provision for required reserves, the board may declare, pursuant to such regulations as may be issued by the Administrator, a dividend to be paid at different rates on different types of shares and at different rates and maturity dates in the case of share certificates." 1977 Act, 310, codified at 12 USC 1763. The legislative history to the 1977 Act is quite revealing:

> The general purpose of this title [IV, subtitled in the report "Modernization of the FCU Act"] is to *provide federally chartered credit unions with those powers considered absolutely essential to enable them to continue operating in a manner beneficial to their credit union members and the Nation's economy.*
>
> [FCUs] are cooperative associations which are organized for the specific purpose of promoting thrift among their members and creating a source of credit for provident or productive purposes. The concept around which they are organized, people of close common interests joining together for the economic benefit of that group of persons, is a concept your Committee has supported over the years. Your Committee believes that *the powers contained in Title IV will allow credit unions to continue to be able to attract and retain the savings of their members by providing essential and contemporary services.*
>
> *Credit unions* continue to prove their value and stability in the consumer credit and savings market and *have demonstrated a legitimate claim for updated and more flexible authority granting them the opportunity to better serve their members in a highly competititive and ever-changing financial environment.*
>
> Your Committee recognizes that *the amendments proposed are essential for the continued financial stability of [FCUs]. To not grant the limited authority contained in this title would require credit unions to compete within the confines of enabling legislation which in general has been substantially unchanged since its enactment in 1934.* H.R. Rep. No. 23, 95th Cong., 1st Sess. 6–7, *reprinted in* 1977 U.S. Code Cong. & Ad. News 105, 110 (emphasis added).

This 1977 House report further states: "[y]our Committee believes that *the 'share certificate' language contained in the [1977] Act incorporates a variety of alternate and variable share programs that do not necessarily require issuance of a certificate.*" H.R. Rep. No. 23, 95th Cong., 1st Sess. 11–12 (emphasis added), *reprinted in* 1977 U.S. Code Cong. & Ad. News 105, 115. The report also mentions an NCUA rulemaking in process in 1977, which eventually became § 701.35 of the NCUA Rules and Regulations (12 CFR 701.35) regarding share, share draft and share certificate accounts. H.R. Rep. No. 23, 95th Cong., 1st Sess. 12, *reprinted in* 1977 U.S. Code Cong. & Ad. News 105, 115. In describing Congressional support for the NCUA's approach, the report states: "[y]our Committee, *recognizing the need for more flexibility in offering savings type accounts*, deems it appropriate that the authority to offer varying rates be expanded to include share accounts. *Authorization to offer share certificates at varying rates and maturities is also included to clarify existing authority.*" *Id.* (emphasis added).

Congress did not change any share certificate authority when it last revised FCU authority to offer accounts, by adding authority to offer share draft accounts, in the Consumer Checking

Account Equity Act of 1980. Pub. L. 96–221, 305, 94 Stat. 145 (1980) (codified at 12 USC 1752(5), 1757(6), 1763 and 1785) (1980 Act). Legislative history to the 1980 Act makes clear that, once again, Congress was giving FCUs parity regarding powers and accounts offered by other financial institutions. S. Rep. No. 368, 96th Cong., 2nd Sess. 2 and 8–9, *reprinted in* 1980 U.S. Code Cong. & Ad. News 236, 237 and 244. (Senate bill provided for "credit unions to offer the equivalent of interest bearing checking accounts." and stated, "Like NOW (negotiable order of withdrawal) accounts at banks and savings and loan associations, share draft accounts offer members of credit unions an opportunity to earn interest on a savings-type account and to access such account through draft instruments, which are the functional equivalent of a check.")

The Board believes that the Congressional intent of the 1970, 1974, 1977 and 1980 Acts in authorizing credit unions to offer share certificate accounts was to permit credit unions to offer a product equivalent to certificates of deposit offered by banks and thrifts. Congress also gave credit unions authority to issue certificate accounts to assist members in saving, to promote stability of the credit union movement's share base, to assist the savings rate of the national economy, to reward credit unions for serving the "saver of small means" and those not served by other financial institutions, to enable credit unions to compete in the modern financial services marketplace, and to enable credit unions to offer more credit and services to members.

The Board also finds support for this position in the common meaning of the term "certificate of deposit." A certificate of deposit is a "document evidencing existence of a time deposit." *Black's Law Dictionary* (5th ed., 1979). Term share accounts are a form of "time deposits," as that term is defined in Regulation D by the FRB. 12 CFR 204.2(c)(1). The cardinal power of FCUs since the enactment of the FCU Act in 1934 has always been "to make contracts." 12 USC 1757(1). This power, in conjunction with the share certificate authority, grant credit unions the ability to set contract rates for share certificate, and indeed, all term share accounts. To hold otherwise would contravene the FCU Act and common sense.

If credit unions could not set contract rates for term share accounts with their locked-in, generally higher than regular share account rates, members would have little incentive to maintain such accounts in credit unions. This could well lead to a flight of capital from credit unions and resulting detriment to the entire credit union movement. Furthermore, member confidence would be seriously eroded by credit unions' failure to meet a specified, written obligation, despite any disclaimer of guaranteed rates.

In NCUA's experience, even educated credit union members equate credit union certificate and term share accounts with bank and thrift certificates of deposit. Congress and NCUA have encouraged the promotion of credit union certificate accounts. See discussion concerning 1970, 1974, 1977 and 1980 Acts, supra, and *NCUA Accounting Manual for FCUs*, § 5160.2 ("A (FCU) may specify in advance or contract for a dividend rate on any type of share account."). Many credit unions regularly accrue for earnings on certificate accounts in the same manner as the accrual of interest of certificates of indebtedness or other notes payable, a practice sanctioned by NCUA. *NCUA Accounting Manual for FCUs*, § 5160.2.1 ("Whenever a dividend rate on any type of account is specified in advance or contracted for, dividend expense should be accrued monthly or at the end of the shortest dividend period if all dividend periods are longer than monthly.") The language used in the model share certificate form promoted in the *NCUA Accounting Manual for FCUs* contains rates certain and contractual promises of payment. *NCUA Accounting Manual for FCUs*, NCUA Form FCU 107SCP, §§ 5030.1 and 5150.6. NCUA clearly leaves all terms and conditions on share certificate accounts, including "all matters affecting the opening, maintaining or closing" of such accounts, to the discretion of the board of directors of each FCU. 12 CFR 701.35(c).

In summation, the Board believes that credit unions are able to set contract rates for term share accounts. This determination is in accord with the 1970, 1974, 1977, and 1980 Acts, NCUA Rules and Regulations, NCUA policy, and common sense. The Board finds that any changes made in the final part 707 from the proposed part 707 resulting from this determination stem from credit union uniqueness and the limitations upon which dividends are paid. In addition, the board finds that it may treat term share accounts differently based upon its authority under section269(a)(3) of TISA to contain such classifications, diffentiations, or other provisions, and to provide for such adjustments and exceptions for any class of accounts as, in the judgment of the agency, are necessary and proper to carry out the purposes of TISA, to prevent circumvention or evasion of the requirements of TISA, and to facilitate compliance with the requirements of TISA. 12 USC 4308(a)(3).

For these reasons, the final rule does not require a disclosure on the nature of dividends for term share accounts. For the same reasons, the final rule treats dividend-bearing term share accounts like interest-bearing accounts in terms of dividend rate and annual percentage yield disclosures. See discussions in supplementary information concerning § 707.4(a)(2)(ii) (disclosures on request), § 707.4(b)(1)(i) (content of advertising disclosures), and § 707.8(c)(2) (advertising).

Paragraph (f)(1)—*Rounding*

The Board, like the FRB, believes that annual percentage yields should be shown to two decimal places and rounded to the nearest one-hundredth of one percent (.01%). If a credit union calculated an annual percentage yield to be 5.644%, it would be rounded down and shown as 5.64%; 5.645% would be rounded up and disclosed as 5.65%. The Board believes that rounding all yields to two decimal places will assist members in comparing rates. The same rule applies to the annual percentage yield and the annual percentage yield earned. Three commenters supported this approach; two commenters opposed it. The Board, for the reasons enumerated herein, and to maintain parity with Regulation DD, chooses to adopt the FRB's rounding rules.

The same rule is provided for rounding dividend (or interest, if applicable) rates. The Board believes that this will enhance members' ability to compare accounts. For advertisements, the dividend rate must also be rounded to the nearest one-hundreth of one percent point (.01%) and expressed to two decimal places. For example, if a credit union's dividend rate is 5.344%, that figure would be rounded down and shown in an advertisement as 5.34%; 5.345% would be rounded up and disclosed as 5.35%. This parallels the rule adopted for the annual percentage yield. The Board believes that figures shown to two decimal places in advertisements will assist consumers in successfully comparing the rates of competing depository institutions. Without such a rule a credit union with a dividend rate of 5.45% could advertise and disclose a rate of 5.5%, the same rate advertised and disclosed by another institution with an interest rate of 5.50%. The Board believes this would hinder members' ability to compare accounts. The dividend rate also must be shown to two decimal places in account disclosures. At the credit union's option, the dividend rate may be shown with greater specificity (more than two decimal places) in account disclosures, in order to allow the use of the exact anticipated or declared rate.

The Board notes that it has deleted the last sentence of the proposed rule language regarding rounding of dividend rates for advertisements, and in its place inserted a sentence parallel to the last sentence in the equivalent Regulation DD provision, "For account disclosures, the dividend rate may be expressed to more than two decimal places." The sentence replaced was fashioned from FRB language in the proposed Regulation DD's appendix A. The FRB moved the language forward to § 230.6(f)(1) only in the final rule. This change makes the NCUA and FRB provisions comparable.

Paragraph (f)(2)—*Accuracy*

The Board adopts a tolerance of 1/20 of one percentage point (.05%) for the accuracy of the annual percentage yield. If the annual percentage yield disclosed is not more than one-twentieth of one percentage point (.05%) above or below the actual annual percentage yield as determined in accordance with appendix A, no violation of TISA or part 707 has occurred. The same rule applies to the annual percentage yield and the annual percentage yield earned. Three commenters supported this approach; two commenters wanted the tolerance expanded to 1/8 of 1 percentage point above or below the annual percentage yield (which would adopt the tolerance standards of Regulation Z, 12 CFR 226.14(a)(open-end) and 226.22(a)(2)(closed-end)). The Board, for the reasons enumerated herein, adopted the Regulation DD tolerance standard.

The tolerance is designed to take account of inadvertent errors. By adopting the tolerance, the Board does not intend to sanction intentional misstatements of the annual percentage yield. Credit unions may not purposely incorporate the tolerance as part of their calculations. Thus, the amount of the tolerance could not be routinely added in when calculating the annual percentage yield to be disclosed. No corresponding tolerance is provided for the dividend rate. The dividend rate offered on accounts is chosen by, and therefore known to, credit unions and involves minimal risk of calculation error. Further, the Board believes the Congress intended members to receive a disclosure of the precise dividend rate paid on the account. The Board therefore believes that adopting a tolerance for the dividend rate is not appropriate.

Section 707.4—Account Disclosures

The statute requires credit unions to maintain an "account schedule" that is provided to members or potential members before an account is opened, and under certain other circumstances. Following the FRB lead, the rule uses the more general and commonly understood terminology of "disclosures" (rather than schedule) in connection with the information required to be provided to members. The Board would like to note that many of the TISA disclosure requirements were already recommended for FCUs by NCUA in § 5150.7 of NCUA's *Accounting Manual for FCUs*. NCUA has long been at the forefront of voluntary account disclosures for credit unions, and has noted widespread compliance with these suggested voluntary account disclosures by FCUs.

The Board also acknowledges the efforts of the state credit union regulators in this field, and the efforts of national trade associations and state leagues with voluntary truth in savings programs. Comment was requested regarding how NCUA could best access existing voluntary truth in savings programs to boost compliance with part 707. The Board has considered the suggestions received, but believes that no determination can be made until the rule is effective and actual, as opposed to potential, compliance issues arise.

Paragraph (a)—*Delivery of Account Disclosures*

Paragraph (a)(1)—*Account Opening*

Section 266 of TISA requires account disclosures to be provided before an account is opened or a service is rendered. TISA also allows the disclosures to be sent within 10 days of "the initial [deposit]" if the member is not physically present when the [deposit] is accepted and the disclosures have not been provided previously. To simplify the timing rules, the proposed regulation applied the 10-day rule to the provision of services, as well as to opening accounts, and defined the period as 10 business days rather than calendar days. The final rule changes these time periods to 20 calendar days, for the reasons discussed in the supplementary information for § 707.2 (see "Deletion of term 'business day' ").

TISA suggests that credit unions are required both to "maintain" a schedule and to provide it to members in designated circumstances. The Board believes that by providing disclosures as required by TISA and the regulation, credit unions satisfy the statutory requirement to maintain a schedule. Thus, the regulation would not place a duty on credit unions to maintain schedules or disclosures, but does impose a duty to deliver the disclosures in the necessary circumstances.

If an account is opened or a service is requested by means such as telephone, wire transfer, or mail, the account disclosures must be mailed or delivered within 20 calendar days of the time the account is opened or service is provided. This timing rule would apply, for example, if a member opens a term share account by mailing in the funds. Credit unions would comply with the provision if the account disclosures are mailed or delivered to the member at the address shown on the records of the credit union. The FRB uses the business day method in the final Regulation DD. The Board requested comments on whether this provision should use business or calendar days in computing the 10-day time period, and stated that it was particularly interested in comments on how this timing rule would affect small, handposting, nonautomated credit unions. In response to the comments received on this issue and on the definition of "business day" (see supplementary information for § 707.2)), the final rule uses 20 calendar days.

TISA states that disclosures need not be provided to the absent member if they were previously provided. The FRB did not impose any staleness time period, believing such a provision to be of limited utility to financial institutions due to the burden of confirming receipt of prior disclosures by the consumer and a lack of any changes in such previously sent disclosures. The FRB also concluded that rollover term share accounts were not new accounts requiring new account disclosures. In addition, the FRB holds that acquiring accounts from other financial institutions through either acquisition or merger does not trigger the disclosure rules of Regulation DD, unless there are changes in the terms that must be disclosed. The Board has followed the FRB on these issues.

Paragraph (a)(2)—*Requests*

Paragraph (a)(2)(i). TISA requires that the account disclosures be made available to "any person" upon request. The proposal differed from TISA and from the FRB's Regulation DD in that it required credit unions to make such disclosures available only to members or potential members (see §§ 707.2 (q) and (u), and supplementary information thereto). The Board believes that this difference is warranted by the unique nature of credit unions, in that credit unions may only provide accounts to their members (and, in some cases, to other, limited classes of persons or entities). The commenters said that credit unions should not have to make disclosures to nonmembers. Some were concerned that giving disclosures to nonmembers would violate the regulation. The final rule clarifies that credit unions may, if they choose, give disclosures to nonmembers. See supplementary information regarding § 707.2(u) on "potential members."

As noted in the preamble to the proposed regulation, nonmembers may be joint accountholders. See supplementary information regarding § 707.2(q) on "member." Nonmembers may also deposit funds in low-income designated FCUs, and some state-chartered credit unions are authorized to offer various accounts to nonmembers. For TISA disclosure purposes, these persons will be included as members.

With the exception of the difference just discussed, this section is adopted from Regulation DD. The regulation requires credit unions to mail or deliver the disclosures within a reasonable time following receipt of a member's or potential member's oral or written request. Some FRB commenters objected to the proposed duty to "mail or deliver" disclosures; instead, they urged that the regulation use the statutory phrase to "make available" disclosures upon request and allow institutions to merely keep disclosures in their offices or branches for consumers to pick up in person. The FRB concluded, and Board believes, that the purposes of TISA would not be furthered if consumers were required to visit branches to obtain information about an account; merely making the disclosures available in an office or branch is not adequate. Convenient access to account disclosures is essential to comparison shopping and in-person visits are not always possible. The FRB, and the Board, believe that the Congress contemplated that institutions would have the duty to actually get account information to consumers who request it. Thus, the regulation requires credit unions to mail or deliver account disclosures upon request if the requester is not at the credit union when the request is made. Although the Board, like the FRB, declines to set an absolute deadline for responding to such a request, the Board believes that twenty calendar days would be a reasonable time.

The Board agrees with the FRB that a credit union would *not* have a duty to provide account disclosures if a member or potential member merely asks about current rates for an account. For example, the common practice of telephone inquiries about rates and yields on certificates would not trigger a duty to send disclosures to the caller—so long as the member or potential member does not ask for such information to be sent. However, the duty is triggered, if, in the course of inquiring about an account, a consumer asks for written information to be provided. This provision would also govern requests for account disclosures by existing consumer accountholders.

The FRB carved an exception for repeat callers who make numerous requests for disclosures for the same account. If the disclosures have already been sent, and those disclosures remain accurate, no further disclosures need be sent. The FRB also made an exception if the consumer requests disclosures on a particular account type (such as checking accounts), as opposed to a particular account product (such as the institution's "Premium Checking Account"). In this event, the institution may provide disclosures for any one or all of its checking account products. In any event, the FRB does not require account disclosures for accounts no longer actively offered by an institution, such as if passbook accounts have been discontinued, or special accounts acquired from a predecessor institution in a merger are limited only to those consumers holding them at the time of the merger. The Board follows the FRB on these issues.

Paragraph (a)(2)(ii). Disclosures must be accurate when sent to the member or potential member. The FRB requires that institutions specify an interest rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and give a telephone number consumers may call to obtain current rate information. For interest-bearing accounts, the Board has followed the FRB's rule. The final rule differs from the proposal in that it treats dividend-bearing term share accounts like interest-bearing account, rather than like other dividend-bearing accounts.

In the preamble to the proposed rule, the Board requested comments on whether credit unions making disclosures on dividend-bearing accounts should, instead of stating the dividend rate and annual percentage yield available within the most recent seven calendar days, state the dividend rate paid on the particular type of account in question as of the last dividend declaration date. In response to comments received, the final rule has been changed to provide for different dividend rate and annual percentage yield disclosures for different classes of accounts. For dividend-bearing accounts other than term share accounts, a credit union may state either the dividend rate and annual percentage yield as of the last dividend declaration date, the prospective dividend rate and annual percentage yield, or both. As noted above, dividend-bearing term share accounts are treated like interest-bearing accounts (see preceding paragraph). For a more complete explanation of these changes, refer to the discussion of "*Disclosure of dividend rate and annual percentage yield*" under the supplementary information for § 707.3(e).

The FRB also allows institutions to describe a term share account's maturity as a term such as "1 year" or "6 months," rather than a specific date, such as "November 1, 1995," since the actual date will not be known. The proposed rule followed the FRB, but the Board requested comment on whether this approach would work for credit unions, given the limitations on the setting of dividends. Two-thirds of commenters favored this section of the rule as proposed. However, a number of commenters preferred to state the maturity as a date. The final rule gives credit unions the option of stating a term or a date.

Paragraph (b)—*Content of Account Disclosures*

Paragraph (b)(1)—*Rate Information*

Paragraph (b)(1)(i)—*Annual Percentage Yield and Dividend Rate*

Credit unions must disclose the annual percentage yield, using that term, computed in accordance with Appendix A, Part I. Credit unions must also disclose the dividend rate, using that term, and would be permitted to use the term "annual percentage rate" in addition to the dividend rate. (See the discussion in the supplementary information accompanying §§ 707.2 (c) and (l) regarding the proposal to use standardized terminology for these figures.) The final rule provides for different dividend rate and annual percentage yield disclosures for different classes of accounts. For dividend-bearing accounts other than term share accounts, the credit union may disclose the dividend rate and annual percentage yield as of the last dividend declaration date, a prospective rate and yield, or both. For interest-bearing accounts and for dividend-bearing term share accounts, the credit union would disclose the actual interest (dividend) rate and annual percentage yield. For an explanation of the treatment of dividend-bearing term share accounts, refer to the discussion of

"*Disclosure of dividend rate and annual percentage yield*" in the supplementary information for § 707.3(e).

Credit unions must also disclose the period of time the prospective dividend rate will be in effect for fixed-rate accounts. As discussed previously, this statement acts as a projection of dividends only, and as a good faith estimate of the dividend rate to be declared at the end of a dividend period. The disclosure required by subsection (b)(8) of this section reinforces this fact, and protects credit unions in the event that the credit union is not in a position of properly paying the prospective dividend rate. This fluidity in rate is peculiar to credit unions, and is not changed by TISA. This section requires credit unions to state the length of time, if any, the credit union anticipates that this rate will continue to be paid after the account is opened. Because of the problems associated with this area, the Board strongly advises credit unions to make all share and share draft accounts variable-rate accounts. This would also obviate the need for a change in terms notice for any rate decreases. See supplementary information regarding § 707.5(a)(2)(i).

For fixed-rate, interest-bearing term share accounts at state-chartered credit unions, and for fixed-rate, dividend bearing term share accounts, disclosure of a maturity date satisfies this requirement. Fixed-rate, interest-bearing accounts other than term share accounts could disclose a date, a period, or include a statement that the rate will be in effect for at least 30 days. Even if a credit union offering such accounts retains the ability to increase a rate without giving prior notice, it should disclose that the initial rate will be in effect for at least 30 days. Any rate increase following delivery of disclosures is not an event that would make the account disclosures incorrect.

Some FRB commenters asked for clarification of several issues relating to the disclosure of the interest rate and annual percentage yield. Some of these institutions asked for guidance about how accurate their disclosures must be when their agreements permit changes as frequently as daily in the rate and yield paid. Some suggested that institutions be permitted to provide a recently available rate, along with a telephone number the consumer could call for current rates. The Board believes, as does the FRB, the most current rate and yield information must be provided to consumers who are opening new accounts. The Board believes the Congress did not intend for credit unions to disclose, for example, a recent dividend rate of 5.00% if in fact the credit union is offering a 4.75% dividend rate on the day the member or potential member opens the account. However, recent rates and yields that are updated at least weekly may be provided to members and potential members who have merely requested information on an account. As mentioned previously, credit unions may use inserts or rate sheets in combination with their other disclosures to state current dividend rates and annual percentage yields, but credit unions must make clear in the account disclosures which rates and yields apply to the account for which disclosures are being given. (See discussion of design requirements in the supplementary information in § 707.3(a), above.)

If a credit union sets a minimum balance to earn dividends, for example $400, the credit union would *not* have to state that the annual percentage yield is 0% for those days the balance in the account drops below $400. Similarly, a disclosure of 0% is not required for credit unions that use the average daily balance method, if the member fails to meet the minimum balance required for the period. The Board believes that, in light of the disclosures about minimum balance requirements, members will readily understand that dividends are not earned if a minimum balance is not maintained, and the rule simplifies disclosures for both credit unions and their members.

In the case of stepped-rate accounts, each dividend rate and the period of time each will be in effect should be provided. For example, if a credit union offered a 1-year certificate with a dividend rate of 5.00% for the first six months and 5.50% for the second six months, it would disclose both dividend rates, the corresponding annual percentage yield (5.39%, assuming dividends are compounded daily), and the fact that each dividend rate would be in effect for successive six-month periods. A credit union offering tiered-rate accounts would disclose each dividend rate along with the corresponding annual percentage yield (or range of annual percentage yields, if appropriate) for that specified balance level. For example, if a credit union pays a 5.00% dividend rate for balances below $1,000 and a 5.50% dividend rate for balances $1,000 or above, both rates would have to be provided, as well as the annual percentage yields that would apply to the account. (See appendix A for the calculation of the annual percentage yields for stepped-rate and tiered-rate accounts.) In the event the initial rate offered on a variable-rate account is higher than the rate that would be otherwise paid on the account, such as a premium rate paid for the first 90 days, such accounts would be considered stepped-rate accounts and the annual percentage yield would be figured according to the rules in appendix A.

Paragraph (b)(1)(ii)—*Variable Rates*

TISA does not expressly require specific additional disclosures for variable-rate accounts. (See the supplemental information to § 707.2(z), where a variable-rate account is defined.) Sections 264(d) and 265(2) of TISA, however, recognize that specific disclosures may be needed for variable-rate accounts. The Board, like the FRB, requires certain basic information about a variable-rate feature in the account disclosures. These disclosures are similar to the abbreviated variable-rate requirements for open-end credit found in Regulation Z. No comments were received on this disclosure. The Board, like the FRB, believes that the required information about a variable-rate account needs to be disclosed initially, particularly since members will not receive change in terms notices if the rate is later decreased. (See § 707.5(a)(2)(i).)

First, credit unions offering variable-rate accounts are required to state that the dividend rate and annual percentage yield may change. Second, they must explain how the dividend rate is determined. For example, if the dividend rate is tied to the 1-year Treasury bill plus or minus a specified margin, the index must be clearly identified and the specific margin stated. A credit union that contractually reserves the right to change rates and does not tie changes to an index would disclose that rate changes are solely within the credit union's discretion. Third, credit unions are also required to explain the frequency with which the dividend rate may change. For example, if the credit union retains the right to change the rate on a weekly or monthly basis to reflect the dividend period, that would be stated. Credit unions that reserve the right to change rates at any time would state that fact.

Lastly, if the account agreement places any limits on the amount the dividend (or interest) rate will change at any one time or for any period, that would be stated. For example, for interest-bearing accounts, if the credit union places a floor or ceiling on rates or provides that a rate may not decrease or increase more than a specified amount during any time period, that would be disclosed. A credit union may describe a floor or ceiling as a specific rate (for example, "your interest rate will always be at least 3%) or by explaining how the limitation operates (for example, "your interest rate will never drop lower than 200 basis points below the interest rate initially disclosed to you."). For dividend-bearing accounts, the nature of credit union accounts is disclosed in § 707.4(b)(8), which disclosure also suffices for this provision. If there are no limitations placed on rate changes, credit unions may, but need not, disclose that fact.

The regulation refers to the dividend rate rather than the annual percentage yield in discussing the variable-rate disclosures. The Board believes this is more accurate since changes in the annual percentage yield derive from changes in the dividend rate.

Paragraph (b)(2)—*Compounding and Crediting*

Paragraph (b)(2)(i)—*Frequency*

The final regulation requires credit unions to disclose the frequency with which dividends are compounded and credited, and any changes in either frequency if a time requirement is not met. If the frequency of either would change if the member does not meet a minimum time requirement, or under any other circumstance, such frequency would also have to be disclosed. (See the supplemental information accompanying § 707.7(c) for a discussion of crediting practices.) In addition, the dividend period applicable to the account must be disclosed. This is a change from the proposed regulation. The Board believes that, with the changes made in §§ 707.6 (a) and (b)(2), and to appendix A regarding the annual percentage yield earned and reporting such on a dividend period basis instead of a statement period basis, this information assumes more importance and must be disclosed to members. For dividend period disclosure, a specific example of frequency must be disclosed. See appendix B, Section B–1, c regarding compounding and crediting.

FRB commenters asked about the degree of precision required to describe crediting and compounding practices. Descriptions such as "quarterly" or "monthly" were considered adequate by the FRB. The FRB also decided that irregular crediting and compounding periods such as if a cycle is cut short at year end for tax reporting purposes need not be disclosed. The Board agrees with these positions, and hereby adopts them.

Paragraph (b)(2)(ii)—*Effect of Closing an Account*

Section 264(c)(9) of TISA requires credit unions to provide a statement, if applicable, that interest that has accrued, but not been credited to the account at the time of a withdrawal, will not be paid (or credited) due to the withdrawal. Section 267 of TISA requires credit unions to calculate dividends and interest on the full amount of principal in the account each day and prohibits calculation methods such as the "low balance" method. For the reasons set forth in § 707.7, the Board believes that credit unions may provide that if an account is closed before dividends or interest is credited, the credit union need not pay dividends or interest that has accrued, but not been credited, on the account. Thus, this policy should be disclosed, if it is relevant. This position is in accord with the FRB in Regulation DD. Similarly, the Board follows the FRB position in accepting a disclosure of an early withdrawal penalty for a term share account that encompasses that amount of accrued, but uncredited, dividends or interest when all funds are withdrawn before maturity as satisfying the requirements of this provision.

Paragraph (b)(3)—*Balance Information*

Paragraph (b)(3)(i)—*Minimum Balance Requirements*

This provision requires credit unions to disclose any minimum balance required to open the account, to avoid the imposition of a fee, or to obtain the annual percentage yield. For example, if a credit union provides that a $3 fee will be assessed if the average daily balance drops below $500, that provision would have to be disclosed. As a credit union uniqueness issue, credit union members generally cannot maintain an account until they have paid for the full par value of a share of the credit union. For this reason, 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. See appendix B, Section B–1, § (d) regarding minimum balance requirements.

Credit unions also have to describe the method they use to determine any minimum balance. The explanation of the balance computation methods can be combined with the disclosure under paragraph (b)(3)(ii) if the methods are the same. If a credit union uses different cycles for determining minimum balance requirements for purposes of assessing fees and for paying dividends or interest, the credit union must disclose the specific cycle or time period used for each purpose. For example, an account's statement cycle may begin on the 15th of the month and that period is used for dividend calculations. However, the credit union may assess fees based on the balance in the account for the preceding calendar month. Credit unions may assess fees by using any method they choose.

If fees on one account are tied to the balance in another account, such provision must be explained. For example, if a credit union ties fees payable on a share draft account to a minimum balance maintained in a regular share account (or a combination of the share draft and regular share accounts), the share draft account disclosures must explain that fact and how the balance in the regular share account (or in both accounts) is determined. The fee need not be disclosed in the regular share account disclosures if the fee is not imposed on that account.

Paragraph (b)(3)(ii)—*Balance Computation Method*

Credit unions must describe the method used to determine the balance on which dividends are paid. (See discussion of § 707.7, regarding permissible balance computation methods.) Thus, if a credit union uses the daily balance method, it would state that it uses the daily balance method and could describe it as one in which dividends are computed by applying a periodic rate to the principal balance in the account each day. If it uses the average daily balance method, the credit union would state that and describe the method as one in which dividends are computed by applying a periodic rate to the average balance in the account for the period or cycle, with the average balance calculated by adding the balance in the account for each day of the period or cycle, and dividing that sum by the number of days in the period or cycle.

The proposed rule included additional disclosures for accounts on which dividends are calculated on increments of par value, and mandated specific language for disclosures on rollback accounts. The final rule bans both par value and rollback accounts, and therefore those disclosures have been eliminated.

Paragraph (b)(3)(iii)—*When Dividends Begin to Accrue*

Section 707.7(c) (which appeared as § 707.7(d)(1) in the proposal) requires credit unions to begin accruing dividends on accounts no later than the business day specified in section 606 of the EFAA and its implementing

Regulation CC. However, credit unions may begin to accrue dividends earlier, such as the day a noncash deposit (typically a share draft or check) is received by the credit union. FRB commenters generally considered the information to be important for consumers and supported the disclosure. However, many were unsure that the information could be conveyed in a simple and effective way that consumers would readily understand. For example, the procedures that institutions follow to determine when interest must begin to accrue under EFAA are very complex. (See 12 CFR 229.14 and its accompanying FRB Official Staff Commentary.) Commenters were concerned that considerable detail would be required and that the information would be more confusing than helpful. Others stated that consumers might not understand general industry terms to describe the balances on which interest begins to accrue, such as "ledger" balance to indicate that interest begins to accrue the day a noncash deposit is received by the institution and "collected" balance to indicate that interest begins to accrue no later than the business day required by EFAA and Regulation CC. Further, the term "collected balance" does not have a uniform meaning within the financial services industry.

The Board agrees with the FRB that comparison shopping is enhanced if account disclosures reveal basic differences regarding when dividends begin to accrue for noncash deposits. Therefore, this provision requires a brief statement on when dividends and interest begin to accrue for noncash deposits. For example, credit unions that begin to accrue dividends pursuant to EFAA could explain that dividends begin to accrue no later than the business day when the credit union receives credit for the deposit. Credit unions that begin to accrue dividends the day a noncash deposit is received by the credit union could state that fact.

Finally, some FRB commenters requested that descriptions of balance methods under paragraphs (b)(3)(i) and (b)(3)(ii) of this section distinguish balances that include deposits and share additions from the day such placement is made (described as "ledger balance") from those that delay inclusion (described as "collected balance"). Given the additional disclosures required by this subparagraph (3)(iii), the regulation does not require institutions to define balance computation methods as being a ledger or collected balance method.

Paragraph (b)(4)—*Fees*

TISA requires disclosure of fees that may be assessed against the "accountholder" as well as against the account. The Board believes that the wording of the final rule, which requires disclosure of all fees that may be assessed in connection with the account, captures the same information required by TISA.

TISA requires the Board to specify, in the regulation, which fees must be disclosed. Since the rule requires all fees assessed in connection with the account to be disclosed, the Board has not attempted to list in the regulation every fee that might be imposed. The regulation does not mandate terminology for fees, and the Board does not believe that all fees could be identified by name in the regulation in any event. Credit unions use different names to describe the same type of fee. For example, a monthly fee imposed regardless of the member's balance or activity might be identified as a "monthly service" fee, a "monthly maintenance" fee, or simply "monthly" fee. However, types of fees that may be assessed in connection with an account would include maintenance fees (such as service fees and dormant account fees); fees related to deposits or withdrawals, whether by share draft or electronic transfer (such as per share draft fees, fees for use of the credit union's automated teller machines (ATMs), fees to stop payment on a share draft previously issued, and fees associated with share drafts returned for insufficient funds); fees for special account services (such as fees for balance inquiries and fees to certify share drafts); and fees to open or close accounts (other than early withdrawal penalties for term share accounts, which are addressed in paragraph (b)(6)(iii) of this section). This list is not meant to be exhaustive or all-inclusive, but merely instructional and illustrative.

The FRB permits share draft or check printing fees to be disclosed in a variety of ways: By disclosing the lowest price at which share drafts could be purchased and indicating that higher prices may apply for the initial order and for reorders; by giving a range of prices; or by stating that prices vary. The Board has followed the FRB in this. Furthermore, the Board, like the FRB, has provided an exception in § 707.5(a)(2) from the requirement to send an advance notice of change in terms for check printing fees, whether or not the fees originate with a third-party vendor.

The regulation requires credit unions to state the "conditions" under which the fee may be imposed. The Board believes that typically the name and description of the fee will satisfy this requirement. For example, if a credit union charges a $.25 fee for each ATM withdrawal from an account, and describes it in that manner, no further information need be provided.

Fees that may be charged to a member for services unrelated to the account—and that would be assessed against nonaccountholders—such as fees to purchase a cashier's or traveler's check, to lease a safe deposit box, to handle bond coupon redemption, to send wire transfers, to photocopy a statement of interest earned for tax purposes (IRS Form 1099), to change names on an account, to generate a midcycle periodic statement, or to wrap loose coins are not required to be disclosed. Such fees need not be disclosed even if the amount of the fees differs for accountholders and nonaccountholders.

Under the final rule in § 707.3(c), if fees required to be disclosed under this section are also required to be disclosed under Regulation E (12 CFR 205.7), compliance with the disclosure requirements of Regulation E will be deemed to be in compliance with this section. For example, under Regulation E a credit union issuing access devices must disclose fees assessed for transactions at its own ATMs, but is not required to disclose charges assessed by another institution for the use of an ATM owned by the other institution. That will also suffice for this regulation. However, this regulation covers situations that are not covered by Regulation E. A fee assessed for an electronic fund transfer that is not covered by Regulation E (for example, a transfer of funds between accounts held at a credit union) must be disclosed under this section.

Paragraph (b)(5)—*Transaction Limitations*

TISA requires credit unions to disclose the "terms and conditions * * * and account restrictions" applicable to accounts. The Board believes that this requires credit unions to state any limitations on the number or amount of deposits or withdrawals, or share drafts that may be written on an account for any time period. If a credit union does not permit withdrawals or deposits (for example, for a term share account) that fact would also have to be stated. The Board also notes that applicable Regulation D disclosures, and for FCUs, the limitations on the number of shares available to members under *NCUA Standard FCU Bylaws*, Art. III, § 2, and limitations on withdrawals under

NCUA Standard FCU Bylaws, Art. III, section 5(a), must also be included in disclosures under this section.

FRB commenters asked for clarification regarding the disclosure of limitations addressed by Regulation E, and the following clarification is adopted by the Board. Regulation E requires disclosure of limitations on the frequency and amount of electronic fund transfers except where confidentiality is essential to maintain the security of the electronic fund transfer system. (See 12 CFR 205.7(a)(4)). Credit unions may rely on Regulation E's disclosure rules regarding limitations on the frequency and amount of electronic fund transfers, including security-related exceptions in complying with this regulation. If, however, disclosures are required under this paragraph, such as if a credit union limited the number of transfers from other accounts at the institution each month, the fact that Regulation E exempts "intra-institutional transfers" from its coverage would not relieve the credit union from making the part 707 disclosure.

Paragraph (b)(6)—*Features of Term Share Accounts*

Paragraph (b)(6)(i)—*Time Requirements*

This provision requires credit unions to state any time requirement for term share accounts that must be met to obtain the annual percentage yield. Thus, a credit union would state the actual maturity date for term share accounts. A term, for example "six months" or "182 days," could be stated when providing disclosures in response to generic requests by members or potential members. If the agreement provides that the term share account may be redeemed at the credit union's option (a "callable" share certificate, for instance), the disclosure must state the date or the circumstances under which the credit union may redeem the account. FRB commenters also asked the FRB whether the maturity date stated on the certificate would satisfy this disclosure requirement. The Board, as did the FRB, believes that account disclosures, including those for term share accounts, may consist of more than one document, so the certificate could be used (as stated earlier in connection with the supplementary information on § 707.3(a)). However, all documents containing the required disclosures must be provided to the member at the same time and must be in a form the member can retain. Thus, if a disclosure is made on a certificate account that must be returned to the credit union at maturity, the disclosure must also be provided to the member in a form the member may retain permanently.

Paragraph (b)(6)(ii)—*Early Withdrawal Penalties*

This section implements section 264(c)(10) of TISA. TISA requires credit unions to disclose any requirement relating to the nonpayment of dividends, including any early withdrawal penalty. The statute places no limitation on how early withdrawal penalties are calculated. The Board has limited this requirement to term share accounts, although the statute does not explicitly do so, since an early withdrawal contemplates a maturity date, which exists only in term share accounts.

Section 264(c)(9) of the statute requires credit unions to provide a statement, if applicable, that dividends that have accrued but not been credited to the account at the time of a withdrawal will not be paid (or credited) due to the withdrawal. The regulation does not contain a parallel provision because, to the extent this is read to refer to a practice other than the imposition of early withdrawal penalties, it appears to conflict with section 267 of the statute. As discussed below in connection with § 707.7(a), section 267 of the statute requires credit unions to calculate dividends on the full amount of principal in the account each day and prohibits calculating dividends using methods such as the "low balance" method. The Board believes that Congress did not intend the disclosure provisions of section 264 to be interpreted as overriding the general rule regarding payment of dividends. Thus, the Board believes that credit unions may not fail to pay dividends on amounts withdrawn, and so this disclosure is inapplicable. As stated above, however, credit unions may impose early withdrawal penalties on term share accounts and may use any method they choose to calculate the amount of the penalty.

FRB commenters asked for clarification of whether existing rules and contract rights are affected by this provision. Rules relating to the imposition of early withdrawal penalties found in regulations such as the FRB's Regulation D are not affected by this provision, responded the FRB. This paragraph, continued the FRB, does not: (1) Confer upon consumers a right to withdraw funds from a time account even if they are willing to accept the penalty described in their account disclosures; (2) impair an institution's right to refuse to permit a withdrawal prior to the maturity of a time account; or (3) regulate under what circumstances the institution may impose an early withdrawal penalty, for institutions that choose to permit withdrawals. The Board follows these interpretations of the FRB.

The regulation requires credit unions to disclose the conditions under which an early withdrawal penalty will be assessed. Some FRB commenters asked whether bonuses that may be "reclaimed" must be disclosed under this provision. The FRB believes (as does the Board) that institutions (and credit unions) that offer bonuses for time (and term share) accounts, must disclose if the bonus may or will be reclaimed and the circumstances under which the reclamation will occur, since this is a type of early withdrawal penalty.

Many FRB commenters were concerned that the FRB proposal seemed to require institutions to calculate an interest rate and an annual percentage yield assuming that an early withdrawal penalty will be imposed during the term of the time account. The final FRB and NCUA regulations do not require such calculations. However, if a withdrawal of some funds triggers a change in the dividend or interest rate and annual percentage yield that is paid on funds remaining on account, or a change in the compounding or crediting frequency, those terms must be disclosed as an early withdrawal penalty.

Other FRB commenters requested guidance on the disclosure of penalties associated with withdrawals of funds from club accounts, such as "holiday club" or "vacation club" accounts that are time accounts. The FRB decided that if these accounts meet the definition of time accounts, they must disclose any early withdrawal penalty. The Board adopts this position for any credit union club accounts with early withdrawal penalties, given the change in the definition of "term share account" in § 707.2(x).

Paragraph (b)(6)(iii)—*Withdrawal of Dividends Prior to Maturity*

This disclosure alerts members to the effect of withdrawing accrued dividends before additional dividends begin to accrue on the amount, since the annual percentage yield for term share accounts generally is based on the assumption that dividends remain in the account until maturity. Credit unions commonly offer term share accounts that compound dividends monthly (or quarterly) and may permit members to withdraw or transfer accrued dividends periodically or to leave the dividends in the account until maturity. If, on a term share account that compounds dividends during the term, a member elects to withdraw accrued dividends, the credit union must disclose that the stated annual percentage yield assumes that dividends remain on deposit until maturity and that a withdrawal reduces the earnings on the account. To ease compliance, this disclosure may be provided any time this option to withdraw dividends is given, regardless of whether the member actually exercises the option or indicates any preference about withdrawals.

The only commenter to address this section said that the proposed disclosure was unnecessary because it stated an obvious fact. The Board disagrees, and the final rule retains this section. The Board notes the nonsubstantive change of the phrase "on deposit" to "in the account" to further reflect credit union terminology and uniqueness in the final rule.

Paragraph (b)(6)(iv)—*Renewal Policies*

For term share accounts, the Board requires credit unions to include a statement of whether or not the account will automatically renew at maturity. TISA does not expressly mandate disclosures of a credit union's policies about renewal, but does require credit unions to disclose the "terms and conditions" applicable to accounts generally. In addition, section 264(d) of TISA recognizes that the Board may wish to require information to be given regarding renewal policies for term share accounts.

The Board believes that it is important for members to be informed whether a term share account will automatically renew or whether the member must contact the credit union at a later time to renew the account, since term share accounts limit the member's access to his or her funds in a way that other accounts do not. This section also requires credit unions to disclose what will happen to funds after maturity if the member does not renew the account, in the case of "non-rollover" accounts. For example, a credit union might disclose that the funds will be placed in a regular share account. However, if dividends are to be paid for only a limited period of time, the time period must be disclosed. If the credit union places the funds into a non-dividend-bearing account, this also must be disclosed.

The rule also requires credit unions to inform members with automatically renewable term share accounts whether or not a grace period exists and the length of such a period. "Grace period" is defined in § 707.2(o) as the period following the maturity of an automatically renewing term share account during which the member may withdraw funds without being assessed a penalty. For example, a credit union might disclose: "You may withdraw the deposited shares without penalty for 10 calendar days after the maturity date of this account." This disclosure does not require credit unions to state whether or not dividends will be paid for the grace period if funds are withdrawn.

Paragraph (b)(7)—*Bonuses*

The Board believes that the language in section 262(a) of TISA regarding disclosures about the terms and conditions of accounts encompasses bonuses, and that TISA's purposes are furthered when members receive essential information about bonuses offered on an account. Thus, the final rule requires that credit unions offering bonuses 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. The Board believes this disclosure will provide members with important information without significantly increasing compliance burdens.

Paragraph (b)(8)—*Nature of Dividends*

This language was added to reflect the limitations under which dividends are paid. As discussed elsewhere in this preamble, dividends are not payable until declared. Dividends are not declarable unless sufficient current and undivided earnings are available after required transfers to reserves at the close of a dividend period. A disclosure explaining this legality of dividends protects credit unions in the event that an anticipated dividend rate cannot be paid, or is not properly payable. This disclosure is similar to one required by § 701.35 prior to its elimination in 1982 and reproposed in 1990.

The Board believes that an account-opening disclosure on this issue is necessary in part 707, but the proposal solicited comments on alternative wording to achieve the same purpose. Most of the commenters addressed the nonguarantee issue generally, rather than offering alternative wording for the disclosure. Moreover, a majority of the comments related to all disclosures on the nature of dividends, not only to those required in the full, written account disclosures.

Nearly two thirds of the commenters generally supported such disclosures. Those who opposed the disclosures claimed that they were unnecessary; that they would put credit unions at a competitive disadvantage; or that members would be unduly alarmed by the disclosures. Some objected to including nonguarantee disclosures in advertisements and/or oral responses, but thought that they were appropriate for the written account disclosures.

A number of commenters said that the disclosures were not applicable to term share accounts and other accounts on which the dividend rates are set in advance. Although under the FCU Act, rates even on term share accounts may not legally be guaranteed, the Board recognizes that the rates on such account are set by contract, and that credit unions are contractually obligated to pay the rates as agreed, assuming available earnings. For that reason, the final rule does not require a disclosure on the nature of dividends for term share accounts. One commenter suggested that some state-chartered credit unions may not be subject to the nonguarantee limitation. The commenter did not cite, and the Board is not aware of, any legal authority for that proposition. Thus, the final rule does not make any change based on that single comment. The Board notes, however, that interest-bearing accounts in state-chartered credit unions are not subject to the nonguarantee limitation, and both the proposed and final rules require nonguarantee disclosures for dividend-bearing accounts only.

Potential Loss of Principal

A section was initially proposed to Regulation DD to cover the situation of foreign currency denominated accounts in banks; however, it was deleted in the final rule. In the proposal, which did not include a section on potential loss of principal, the Board stated that it was inclined to follow the FRB, but asked for comment on whether any FISCUs or NICUs have such accounts, or whether any other credit union accounts exist which would benefit from a disclosure concerning loss of principal. The only commenter to address this issue said that few, if any credit unions offer such accounts, and that the Board should not include such a section. The final rule does not include such a section.

Paragraph (c)—*Notice to Existing Accountholders*

Paragraph (c)(1)—*Notice of Availability of Disclosures*

Section 266(e) of TISA requires depository institutions other than credit unions to include a notice on or with any regularly scheduled periodic statement sent to existing accountholders "within" 180 days of issuance of the FRB's Regulation DD. However, under Section 269(a)(4) of TISA, the law does not apply to any depository institution until the effective date of the FRB's regulation, or to any credit union before the effective date of regulations prescribed by the NCUA Board. The FRB has construed these provisions to mean that compliance duties, including the duty to send notice to existing accountholders, do not begin until six months *after* the FRB has adopted a final regulation. With the extra three month extension granted by the HDCA, this period lengthened to nine months. Likewise, the NCUA Board believes that credit unions are not required to send the notice until the effective date of part 707. Otherwise, credit unions would be required to include a notice to existing account holders *prior to* the effective date of the regulation. The Board believes that requiring credit unions to provide this notice before disclosures are required to be available could be confusing to members who might request the disclosures. Furthermore, members who open accounts before the effective date of the regulation but after the mailing date of the periodic statement in which the notice was sent would not receive disclosures or be alerted to their availability. The final rule therefore requires credit unions to give the notice on or with the first periodic statement sent to existing account holders *after* the effective date of the final regulation.

The notice required by this section need only be provided once, and informs current accountholders that they may wish to request terms and conditions about the account. If the credit union receives a request, it would provide the account disclosures described in § 707.4, including the current dividend rate and annual percentage yield for the member's account. As an alternative to including this notice on a periodic statement, the final rule permits credit unions to send the account disclosures themselves, as long as they are sent with the periodic statement.

The statute requires that the notice state both that the accountholder has a right to request disclosures and that he or she may make such a request. The final rule merely requires a statement that the accountholder may wish to request the disclosures. The Board believes that this adequately alerts members to the availability of disclosures for their accounts. Some FRB commenters were concerned that consumers might misinterpret the notice as implying that account terms had changed. In light of this, the Board permits credit unions to include additional information with the notice to alleviate any such concerns, or to indicate (if applicable) that the member has already received similar disclosure as required by state law. The notice must, however, make clear that the member may request a copy of the disclosures.

Comments received on the FRB proposal requested guidance on several topics. Like the FRB, the NCUA Board provides guidance on: (1) The identification of member accounts from the existing records of the credit union; (2) the need to create disclosures for accounts no longer offered to the membership; and (3) the timing and format of the notice.

Existing member accounts. The regulation requires that notice be provided to all existing account holders. However, as discussed earlier in § 707.2(a), accounts held by an unincorporated nonbusiness association of natural person members prior to January 1, 1995, are not covered by the regulation unless the association notifies the credit union that it fits the "account" definition. If a credit union is notified before the effective date, credit unions are not required to send the notice required by this paragraph, but must treat the account as a member account within a reasonable time after the notification.

Currently offered accounts. The final rule requires that credit unions provide disclosures only for the accounts that are currently available as of January 1, 1995. Many credit unions continue to carry accounts that are no longer offered to members. For example, if a credit union acquires accounts during a purchase and assumption or merger, it may maintain the accounts as a courtesy to its new members from the old credit union, even though the account type will not be offered thereafter. The Board does not believe it was the intent of the Congress to require tailored disclosures for each and every existing account, regardless of whether the account is still offered to members. The Board recognizes the significant cost burden associated with designing separate disclosures for existing accounts that are no longer offered, and the limited use of such disclosures in the future (as members would not be able to open such an account). The Board also believes if disclosures for such accounts were required, credit unions might simply change the terms of existing accounts to conform them to accounts currently offered. Thus, the regulation limits the duty to provide the notice (and disclosures) to accounts available to the membership as of the effective date of the regulation.

Timing and format requirements. The final regulation clarifies that the notice required by this section may accompany either the first periodic statement sent after the effective date, or the periodic statement for the first cycle beginning after that date. The rule applies regardless of the interval between periodic statements. For example, assume a credit union's statement cycle begins December 15, 1994, ends January 14, 1995 and the statement is sent July 15; the next statement cycle begins January 15 and ends February 14, and the statement is sent February 15. The credit union may provide the notice on either the January 15 statement, since it is the first one mailed after the effective date, or the February 15 statement, since it covers the first cycle beginning after the effective date.

For those credit unions wishing to provide the notice to members before the effective date of January 1, 1995, as a general rule credit unions may begin complying with part 707 any time after its adoption and before the effective date. Therefore, credit unions may provide the notice on a periodic statement before January 1, 1995, but only if the credit union is prepared to provide account disclosures upon request as of the date the notice is sent. This will ensure that the Congressional intent regarding the availability of disclosures for existing members is met. If the credit union does comply before the effective date, it must establish procedures to ensure that members and potential members opening new accounts before that date, but after the notice is provided to existing members, receive account disclosures.

The final rule tracks the statutory language by requiring that the notice be included "on or with" the periodic statement. The notice can be on an insert included with the statement, but it cannot be sent out as a separate mailing. The notice must state that members may request account disclosures, containing terms, fees, and rate information for their account, or words of similar meaning.

If the credit union provides the notice of availability to existing account holders and the member requests disclosures, TISA does not prescribe how credit unions must respond. The Board recognizes that it may be difficult to distinguish a request by a member or potential member from a request by a nonmember. For this reason, the Board permits credit unions to either take time to verify membership status or eligibility, or to give the disclosures to nonmembers. See the supplementary information on § 707.4(a)(2)(i).

Credit unions may, but are not required to, provide a telephone number or address for members to use to make the request for disclosures. If, however, the request is received in a manner other than the notice directed, the credit union is still required to provide the disclosures as specified in paragraph (a)(2) of this section. The Board believes that this uniform approach to requests for disclosures will ease compliance for credit unions and assure members of convenient access to information about their accounts whether they are existing or potential members.

Paragraph (c)(2)—*Alternative to Notice*

As an alternative to providing the notice of availability, the final rule allows credit unions to send the account disclosures themselves, either with the periodic statement or in a separate mailing. However, they would need to be sent out no later than when the notice of availability is required to be sent after the effective date. Further, credit unions that send multiple account disclosures in lieu of sending the notice of availability need not identify which account the member holds, and may send out account disclosures that comply with paragraph (a)(2) of this section. The Board believes that this rule will ease compliance for those credit unions that go beyond the strict requirements of the regulation to provide members with the actual disclosures about their accounts.

Section 707.5—Subsequent Disclosures

Paragraph (a)—*Change in Terms*

Paragraph (a)(1)—*Advance Notice Required*

Section 266(c) of TISA requires credit unions to send a 30-day advance notice to the member of any change in the items required to be disclosed in the account disclosures *if* the change might reduce the annual percentage yield or adversely affect the member. The final rule requires a written notice describing the change and its effective date to be sent 30 days before the effective date of the change, unless one of the three exceptions, discussed below, is met. For example, if a credit union increases the minimum balance required to earn dividends or to avoid imposition of a fee or increases the fee it charges for stop-payment orders, an advance notice must be provided. The notice must be given whenever a change occurs after the account disclosures are given. The rule would apply to *all* accounts, not solely to accounts opened after the effective date of the regulation. The regulation does not, however, require a 30-day advance notice for a change in terms if this would require a credit union to send a notice prior to the mandatory compliance date. For example, a credit union is not required to send an advance notice of a change that becomes effective January 15, 1995, since that is less than 30 days after the mandatory compliance date.

Five commenters, including two national trade associations, supported this section, but requested some clarification. Four other commenters also requested such guidance, but did not express support for or opposition to the proposal. That clarification is herein provided. First the FRB has not provided guidance on the proper means of giving adequate notice, whether the means of mail, newsletter, statement stuffer, lobby posting, or telephone response machine are permissible means. Until the FRB provides guidance in its official commentary to Regulation DD, the Board will permit notice by any means given to an individual member at the member's address. Therefore, the mail, newsletters, and statement stuffers are permissible means; lobby posting and telephone response machines are not. Seven commenters felt the time should be made a "reasonable time," but disagreed as to what that is (anywhere from 15 days to 90 days). The 30 day period is statutory; TISA section 266(c), and the Board does not have the authority to alter this timing. Seven commenters requested the section be deleted. This is impermissible as the change in terms notice is required by section 266(c) of TISA.

Content. The notice requirement applies only to items required to be included with the account disclosures. For example, if a credit union increases the minimum balance required to earn dividends or to avoid imposition of a fee or increases the fee it charges for stop payment orders, an advance notice must be provided. Similarly, if the dividend rate on a fixed-rate account decreases, the credit union must send a notice in advance of the scheduled rate change. (An advance notice of an increase in the dividend rate is not required by the rule.) Increases in a credit union's charge for services not related to an account, such as for purchasing traveler's checks, does not trigger the notice requirement, since it is not required to be disclosed under § 707.4(b). If a combined disclosure statement for two types of accounts was initially provided (and indicated which terms applied to each account), and the credit union later changed a term for one of the accounts, the change-in-terms notice would need only be given to those members holding that type of account, and not to the holders of the second type of account.

Regarding the format for the disclosure, the general rules in § 707.3(a) apply. Credit unions may include the change in terms disclosure on a regular periodic statement or in a special mailing, and may combine information concerning the changed term with other information on the same or separate pages. Credit unions that wish to provide an entire updated account disclosure may do so as long as the changes are specifically brought to the member's attention. For example, credit unions may state that "X" fee has been changed (including, of course, the amount of the new fee), or use an accompanying letter that alerts the member to the new fee, or highlight the changed term in some other way. To ensure that members understand when the change may affect their accounts, credit unions must disclose the effective date, for example, "as of March 15, 1995." Words similar to "in 30 days" cannot be used unless the notice clearly indicates the starting date.

A change in terms notice is not triggered if changes are specifically identified in the account disclosures given initially. For example, if a share draft account disclosure states that the monthly service fee of $5.00 is waived for employee account holders during their employment, but will be assessed if the accountholder is no longer employed at the credit union, no advance notice is required to begin assessing the monthly service account fee when the member leaves the employment of the credit union. Similarly, if an account is opened after a credit union has sent a change in terms notice to its existing account holders, but prior to the effective date of the change, the credit union is in compliance if the change in terms notice is provided to the new members along with the account disclosures before the account is opened.

If a change will apply during the subsequent term of a renewing rollover term share account, it is not a "change in terms" requiring a notice under this paragraph. (See paragraph (b) of this section, below, for disclosure requirements for maturing term share accounts.) For term share accounts of longer term than one month, however, if terms change during the term of a term share account, the 30-day notice would have to be provided.

Pursuant to § 707.3(c), if the term requiring a notice to be sent is a term that triggers a change in terms notice under Regulation E, compliance with the disclosure and timing requirements of Regulation E will satisfy the requirements of this section. (See 12 CFR 205.8, which requires change in terms notices to be sent at least 21 days before the scheduled change.)

Paragraph (a)(2)—*No Notice Required*

Paragraph (a)(2)(i)—*Variable-Rate Changes*

Sections 265 and 269(a)(3) of TISA authorize the Board to make exceptions to TISA's requirements for variable-rate accounts, and the Committee report accompanying H.R. 2654 of the House Committee on Banking, Finance and Urban Affairs, September 12, 1991, indicates the change-in-terms requirement was not intended to apply to changes in the dividend rate (and corresponding changes in the annual percentage yield) for variable-rate accounts. In addition, the Board believes that such a requirement would be overly burdensome to credit unions, result in lowered rates to avoid the cost of sending frequent notices, cause safety and soundness concerns, and be duplicative of information received in the account disclosures and periodic statement. Thus, the Board follows the FRB, in relying on the exception authority in section 265(2) of TISA to further the purpose of TISA. For the reasons expressed in the proposal, and here, the Board finds it necessary to exempt rate changes for variable-rate accounts from the advance notice requirements of the rule.

In addition, the Board follows the FRB, in finding that change-in-terms notices are not necessary for variable-rate accounts for which no periodic statements are sent, such as for passbook accounts. The Board believes that account disclosure adequately alerts members to potential rate changes and that they have easy access to current rate information. Furthermore, the Board recognizes, as did the FRB, that in a volatile rate environment the cost of sending notices may cause credit unions to delay or not implement rate increases that otherwise might be passed on to members.

Paragraph (a)(2)(ii)—*Share Draft and Check Printing Fees*

Utilizing its exemption authority under section 269(a)(3) of TISA, the Board exempts changes of share draft and check printing fees from the change in terms requirements. The exception, as proposed, was narrowly drawn to exempt only fees assessed by third party vendors and was created to facilitate compliance with part 707. Unlike other fees strictly within the control of credit unions, the amount of printing fees is in the control of vendors, who determine the effective date of price changes, and members, who decide whether or not to purchase share drafts or checks from the vendor associated with the credit union and, if so, what style will be chosen, and when same will be ordered.

In the FRB's March 1993 amendment to Regulation DD (58 FR 15077, March 19, 1993), the FRB enlarged the exception to apply to any check printing fees, whether the fee is assessed by a third party vendor or by the credit union itself. One national trade association commented that NCUA should follow this amendment. These fees are based on the style and quantity of share drafts or checks ordered, and the member has primary control over such decisions. Consequently, sending a change in terms notice for such fees would provide minimal benefit to members while imposing a significant burden on credit unions. The final rule provides that a change in terms notice is not required for any increase in fees for printing share drafts or checks. The rule allows a credit union to take advantage of the exception even if it adds a "mark-up" to the price charged by the vendor before passing the fee on to the member.

The Board also adopts the FRB position, promulgated in the March 1993 FRB amendment to Regulation DD, that check printing fees are not maintenance or activity fees even if imposed in whole or in part by a credit union. This exempts share draft and check printing fees for purpose of the advertising rules in § 707.8(a). This prevents such fees from being an impediment to advertising an account as free, since these fees are not "maintenance or activity fees" preventing a credit union from advertising an account as "free" or "no cost" under § 707.8(a).

Paragraph (a)(2)(iii)—*Short-Term Term Share Accounts*

With its exemption authority, the Board has also exempted short-term term share accounts, defined as those with maturities of one month (a period up to 31 days) or less, from the change-in-term requirements. Requiring credit unions to send a 30-day advance change-in-terms notice for such time accounts would be impossible. It would be burdensome for credit unions without providing meaningful benefits to members holding term share accounts. (As discussed in paragraph (c) of this section, however, credit unions are required to send, after a maturity, a disclosure of any difference in the terms of the new account as compared to the terms for the existing account.)

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

The renewal of a term share account is the equivalent of opening another account, and requires a set of disclosures about the new account. TISA requires account disclosures to be provided to members at least 30 days prior to the maturity of a term share account that is renewable without notice from the member. Following the FRB, the Board finds that creating three exceptions to this requirement for automatically renewable term share accounts 30 days in advance of maturity is necessary to facilitate compliance, benefit members and carry out the purposes of TISA. The regulation provides that: (1) Disclosures may be given closer to maturity rather than a full 30 days in advance as long as at least a five-day grace period is provided; (2) maturity notices for term share accounts with maturities of one year or less need not provide all the information contained in an account disclosure, but only the key information and any changed terms; and (3) no advance notice is required for term share accounts with maturities of one month or less.

For automatically renewable term share accounts with maturities of more than one year, credit unions would provide full account disclosures as TISA requires. If the scheduled maturity date is one year or less but more than one month, credit unions must provide key information and any terms (other than rates) that may be different on the renewing account compared to those on the existing account. If the maturity date is one month or less (a period up to 31 days), advance disclosures are impracticable to deliver, but credit unions must provide a notice of any changed terms (other than rates) applicable to a renewed account within a reasonable time after renewal.

Forty-four letters commented on the proposed term share renewal notices. Three commenters supported the proposal in its entirety. One specifically supported the exemption for certificates with maturities of one month or less. Five commenters said that the proposal was unclear or confusing. One trade association suggested that the entire proposal needed to be simplified. The trade association was also concerned about civil liability for giving the wrong notice, and suggested that the content of all notices should be the same: Maturity date; changes in terms; and call the credit union for full disclosures. Two commenters said that the entire section was unnecessary and should be deleted.

Seven commenters were opposed to giving notice 30 days before maturity. All of those commenters thought that 30 days was too early, and three said that if notice was sent 30 days before maturity, members would either lose it or forget. One suggested changing 30 days to "a reasonable period."

None of these commenters based their recommendations on the uniqueness of credit unions. The proposed rule language was adopted from Regulation DD. Since part 707 must be substantiality similar to Regulation DD, and there are no uniqueness issues, the Board has not made any changes in the final regulation. The Board notes that both Regulation DD and part 707 ease compliance by including the three exemptions to the statute discussed *supra*.

Alternative timing rule. The alternative rule provides a "sliding scale" of 20 calendar days' advance notice, provided at least a five-calendar-day grace period is given. If a credit union provides a grace period of at least five days on rollover time accounts, the provision would permit the credit union to provide the required disclosures 20 days before the end of the grace period. Thus, if a five-day grace period is offered, a credit union must send the required disclosures at least 15 days before the maturity date. If a credit union offers a 10-day grace period, the advance disclosures must be sent at least 10 days before the scheduled maturity date. This alternative provides credit unions with greater flexibility in sending notices closer to maturity, and provides benefits to members, who may contact the credit union to learn the annual percentage yield and dividend rate projected for the renewing certificate term share account. Credit unions that do not provide at least a five-day grace period must provide the 30-calendar-day advance notice.

The Board believes this alternative benefits members by providing them with notices that will be effective reminders of the upcoming maturity of their term share accounts and useful tools for comparison shopping at a time when competing rates and yields are more likely to be known.

Paragraph (b)(1)—*Maturities of Longer Than One Year*

If an automatically renewable term share account has a maturity longer than one year (more than 365 days, or more than 366 days in a leap year), the rule tracks the statutory requirement that credit unions provide members with all applicable account disclosures required for new accounts, and adds a disclosure of the date the existing account matures. The rule requires credit unions, on dividend-bearing accounts and on interest-bearing accounts without guaranteed renewal rates, to state that the dividend (or interest) rate and the annual percentage yield for the account have not yet been determined, the date when they will be determined, and a telephone number the member can call to obtain the dividend (or interest) rate and the annual percentage yield that will apply to the renewed term share account, even if they must contact the credit union to do so.

The regulation addresses the problem presented when advance disclosures are required to be sent before the projected dividend rate and the annual percentage yield for the renewed term share account are known. The Board does not believe TISA requires credit unions to "lock in" or guarantee the rates for an account at the time of the advance notice. The Board believes members are better served by receiving the actual annual percentage yield that will apply to the renewed term share account, even if they must contact the credit union to do so. Furthermore, if credit unions were required to provide rates as of the date of the notice, members would have to call the credit union to determine the actual annual percentage yield at the time of renewal anyway. Therefore, the alternative of including the most recent annual percentage yield appears to be of little benefit to members.

Paragraph (b)(2)—*Maturities of One Year Or Less But Longer Than One Month*

For rollover term share accounts bearing maturities of one year (365 days, or 366 days in a leap year) or less but longer than one month (31 days), credit unions may either give full account disclosures as they do for automatically renewable term share accounts of longer than one year, or provide an abbreviated notice. The abbreviated notice tells the member the date the existing account matures and the maturity date if the account is renewed, the dividend (or interest) rate and the annual percentage yield if they are known (or, if they are not known, the fact that they have not yet been determined, the date when they will be determined, and a telephone number the member can call to obtain that information), and any change to the terms required to be disclosed under § 707.4(b) when the account was opened. Whether full or abbreviated disclosures are provided, the information may be sent either 30 calendar days before maturity, or 20 calendar days before the end of a grace period (of at least five days). Thus, if a credit union wishes to offer a five-day grace period on some automatically renewable term share accounts and a 10-day grace period on others, this rule permits the credit union to send all notices 15 days prior to maturity, or to establish separate mailing schedules for each category.

Two commenters thought that the abbreviated notice allowed for rollover term share accounts with terms of one month to one year should be extended to rollovers of up to two years. Another suggested that it be extended to all term share accounts. Again, since the proposal was adopted from the FRB's rule and there is no uniqueness issue, the Board has made no change in the final rule.

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

The legislative history accompanying TISA recognizes that special rules may be needed for short-term term share accounts. (See the Committee Report accompanying H.R. 2654, of the Committee on Banking, Finance and Urban Affairs, September 12, 1991.) Two policy reasons for providing advance notice to members with automatically renewable term share accounts are: (1) To remind the member that the account is nearing maturity and that funds will be reinvested for a set period of time (thus limiting access to funds) if the member does not act; and (2) to give the member an opportunity to comparison shop before reinvestment occurs. The Board believes that members with short-term accounts do not have the same need of a reminder of impending maturity as do those with longer-term instruments. Furthermore, a member may derive little or no benefit from receiving a second virtually identical set of disclosures, for example, 15 days after purchasing a 31-day term share instrument. In addition, compliance with a 30-day advance notice requirement would literally be impossible for very short-term instruments (such as 7-day share certificate).

The rule requires credit unions to provide limited information to members with rollover term share accounts with maturities of one month (31 days) or less. Credit unions are not required to send notices in advance of maturity. However, if a term disclosed when the account was opened (other than the dividend (or interest) rate and annual percentage yield) changes at renewal, credit unions must send a brief notice describing the change within a reasonable time after the renewal of the new account. While this notice may rarely be sent for short-term term share accounts since non-rate terms seldom change, the Board believes, as does the FRB, that the provision reflects Congressional intent to provide members with key information while accommodating operational concerns.

Paragraph (d)—*Notice Before Maturity for Term Share Accounts Longer Than One Year That Do Not Renew Automatically*

For non-automatically renewable term share accounts (that is, those that are renewed only if the member affirmatively contacts the credit union prior to or at maturity to renew the account) with maturities of longer than one year (more than 365 days, or more than 366 in a leap year), credit unions would provide a notice that states the maturity date of the term share account and whether dividends will be paid on the funds after maturity. The notice must be mailed at least 10 calendar days before maturity.

This subsection was not required by TISA, and the Board includes it only because of its inclusion in Regulation DD. However, even the FRB realized that consumers are informed at the time the account is opened of the maturity date and whether dividends (or interest) will continue to accrue after maturity, funds are not "locked in" for another term automatically if the member does not promptly act, and this requirement is an operational burden.

Credit unions with existing nonrollover term share accounts with maturities of longer than one year that mature after the effective date must start providing notices after that date, but need not send notices prior to that time. (This rule parallels the transition rules for rollover term share accounts.) For example, if an 18-month rollover term share account matures five days after the effective date, a credit union is not required to send a notice since this would require a credit union to send a notice prior to the effective date of the regulation. To ease compliance for credit unions that wish to use a uniform timing rule of 30 days advance notice for maturing term share accounts, the transition rule for nonrollover term share account parallels the transition rule for rollover term share accounts with maturities of more than one year. Thus, credit unions need not send notices under this paragraph for accounts that mature before February 1, 1995. Nonrollover term share accounts that mature after February 1, 1995, must receive notice at least 10 days in advance of the scheduled maturity date.

The Board requested comments on whether this section should be included or deleted, and any reasons for deletion. Thirteen commenters said that no prior notice should be required for nonrollover term share accounts. One of those, a trade association, suggested sending notice 10 days after maturity. Two commenters were opposed to sending any notice for nonrollover term share accounts. One said that no notice should be required for rollovers of less than one year, and one said there should not be any notice for any term share account with a term of less than one year.

This section was taken from the FRB's rule. No commenters argued that this section should be changed for uniqueness reasons. Therefore, the Board does not believe that a change is warranted, and the final rule is identical to the proposed.

Section 707.6—Statement Disclosures

Section 268 of TISA requires credit unions to include specific information on or with each periodic statement provided to members. It reads:

§ 268. Periodic statements.

Each depository institution shall include on or with each periodic statement provided to each account holder at such institution a clear and conspicuous disclosure of the following information with respect to such account:

(1) The annual percentage yield earned.

(2) The amount of interest earned.

(3) The amount of any fees or charges imposed.

(4) The number of days in the reporting period.

12 U.S.C. 4307.

NCUA's rule does vary from the proposal and from the analogous section in Regulation DD. In the proposal, the periodic statement disclosures mirrored the format and substance of the Regulation DD disclosures. The statutory disclosures were required on each periodic statement, although a special rule was permitted for credit unions calculating dividends on the average daily balance method. Comments were requested on whether the special rule should be expanded to other dividend-bearing accounts, particularly rollback accounts.

Nine commenters, including two national trade associations, requested that the special rule be expanded to include all dividend-bearing accounts, as dividends cannot be known and credited until declared at the end of a dividend period. Two commenters disagreed with the proposal on grounds of operational burden. One hundred and twenty-seven commenters commented on the uniqueness of dividends and the dividend setting process.

The Board finds the arguments of the commenters persuasive. The Board is authorized to prescribe a regulation taking into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts. The dividend process, as described in section II, B of the supplementary information, requires that credit unions not credit members' accounts until the end of the dividend period. TISA specifically states that it requires no particular crediting period, which for credit unions with share accounts means dividend period. TISA section 267(b), 12 U.S.C. 4306(b). In addition, the dividend process is part of the unique nature of credit unions. See supplementary information, section II, A, regarding the unique nature of credit unions. Reading the nature of dividends into the language of TISA leads the Board to promulgate the final rule with language varying from the proposal. This authority is further bolstered by section 269(a)(3) of TISA, which permits the Board to make classifications, differentiations, and other provisions, and to provide for such adjustments or exceptions for any class of accounts as, in the judgement of the Board, are necessary or proper to carry out the purposes of TISA. 12 U.S.C. 4308(a)(3).

Using the above authorities, the Board has determined that dividend-bearing member accounts placed and held in credit unions are exempt from reporting all periodic statement disclosures on every statement when the dividend period does not agree with, or varies from, or is different than, the statement period. Instead, for dividend-bearing accounts, credit unions may disclose the required information either on each periodic statement, or on the statement on which dividends are actually credited to the member's account. The Board, following the FRB's approach, will also allow any credit union to use this rule when the average daily balance method is used. In this vein, NCUA's rule is only a slight expansion of the Regulation DD special rule for average daily balance method accounts, and is consistent with the FRB approach.

The Board has rearranged the language of the proposal for ease of understanding. Proposed subsection (b), formerly the special rule for credit unions using the average daily balance method, has been made into subsection (a) of the final rule, and expanded to provide an option to credit unions whose dividend periods do not match their statement periods, as well as to those credit unions using the average daily balance method. Proposed subsection (a), formerly the general rule of information to be disclosed, has been made into subsection (b) of the final rule.

As in the proposed, the Board agrees with the FRB that the law does not require periodic statements to be sent by a credit union, but that *if* a credit union sends a periodic statement certain information must be included. (The statute does not define a periodic statement. See the definition in § 707.2(t) above.) This requirement applies to existing accounts as of the effective date of part 707, as well as to new accounts opened after the effective date.

Moreover, the information listed in this section would be given only to the extent applicable; for example, a periodic statement for a nondividend-bearing account would not include dividends or an annual percentage yield. Nor would the annual percentage yield earned be required to be disclosed on the periodic statement for a dividend-bearing account when no dividends are earned during the cycle.

Paragraph (a)—*Rule When Statement and Crediting Periods Vary*

This rule permits a credit union, on dividend-bearing member accounts, to report 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 accounts, credit unions may disclose the required information either upon each periodic statement, or on the statement on which dividends are actually earned to the member's account. Since TISA does not specify or require any particular crediting or dividend periods (TISA, section 267(b)), the board of directors of a credit union may continue, as in the past, to choose any dividend period—daily, weekly, monthly, quarterly, semi-annually, or annually. For credit unions with a daily or weekly dividend period, the Board encourages use of aggregated disclosures on a regular periodic statement, in order to save the credit union the expense of distributing daily or weekly statements. NCUA is aware that in these situations it is not difficult operationally to coordinate and collate the aggregation of the short dividend periods with the issuance of a periodic statement. Of course, this decision is one to be made by the board of directors of each credit union. For credit unions with dividend periods of longer than a month, the Board encourages use of the permitted alternative of making the disclosures only on such statements when dividends are actually earned and credited to the member's account. NCUA, like the FRB, is also permitting credit unions calculating dividends on the average daily balance method to take advantage of this rule. It is expected that credit unions will disclose applicable information by statement period for all interest-bearing accounts.

For those credit unions sending statements on dividend-bearing accounts more often than the dividend period, the Board is not requiring any interim disclosures. Credit unions may find it useful to place a notice that the annual percentage yield and dollar amount of dividends earned will appear on the first statement after the close of the dividend period, or words of similar import. Credit unions may choose to include a telephone number to call for interim information, if desired by a member. Or credit unions may choose to include no information educating the member. The Board suggests that credit unions give some indication to the member of when the required information will be received by a member, to enhance comparison shopping with other financial institutions. However, no such disclosure is required. Of course, a credit union can choose to voluntarily disclose any available information on statements, even if not required to do so under the final rule.

Average daily balance method. This section (and appendix A, part II) also addresses how the disclosures should be made on periodic statements if dividends are determined by using the average daily balance method and are calculated on a period other than the statement period. For example, dividends may be calculated for a calendar month dividend period, whereas the statement may cover a period from the 16th of one month to the 15th of the next month. A similar case exists where the statement is provided covering a calendar month, but the dividend period is quarterly. In these and similar cases, the Board intends to follow the FRB in disclosing the amount of dividends earned for the dividend period and the annual percentage yield earned based on the average daily balance for that period on the statement for the period in which the dividend period ends. For example, assume a credit union uses the average daily balance method based on a calendar month period, and that dividends of $5.25 were earned during April and that dividends of $6.00 were earned during May, and the credit union sends a statement for the period April 16 through May 15. That statement would disclose $5.25 as the dividends earned and an annual percentage yield earned based on that dividend and the average daily balance in the account during the month of April. If a credit union uses this alternate rule, the length of the dividend period must be disclosed in addition to the length of the statement period. For example, a statement could disclose the 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 average daily balance for the period April 1 through April 30."

This provision would apply only if the average daily balance on which the dividends are calculated is known by the end of the statement cycle. For example, a credit union that sends a statement each calendar month for an account and calculates dividends based on the average daily balance method *for a calendar month*, but credits dividends quarterly, would use the rule in this paragraph. In such a case, a credit union has the option of disclosing dividends earned in each of the three months on three succeeding monthly statements (since an average daily balance figure is used to calculate dividends each monthly statement period); the statement for the third month of the quarter may, but is not required to, indicate the dividends credited for the quarter, in addition to the dividends earned during the third month. If a credit union calculates dividends on an average daily balance *for the quarter*, however, a dividend figure cannot be stated on the monthly statements for either of the first two months of the period since no average daily balance is used to calculate dividends for those times. Consequently, no annual-percentage-yield earned and no dividends-earned figures would be disclosed on the statements for the first two months of the quarter. In such a case, the dividends earned and the annual percentage yield earned provided on the third monthly statement would be based on the entire quarterly period.

Paragraph (b)(1)—*Annual Percentage Yield Earned*

Like the FRB, NCUA proposed putting the APYE (annual percentage yield earned) on periodic statements to show the relationship between the dividends earned and the balance in the account for the statement cycle. Fifteen commenters favored this approach, citing financial institution parity. Sixty-eight commenters, including two national trade associations, opposed this approach, citing member confusion, expense of revising statements, impact upon small credit unions, inapplicability to rollback accounts, and misleading percentages given the actual amounts involved. Most of these negative comments seemed engendered by the application of the annual percentage yield earned to rollback accounts. Since rollback accounts are banned by the final rule, many of these comments are no longer relevant. Many of these same commenters suggested NCUA permit credit unions to disclose the amount paid without the annual percentage yield earned. One commenter suggested NCUA permit credit unions to disclose the formula alone; another suggested disclosure of the simple dividend rate alone.

The Board, after careful consideration of the comments, decided to retain most of the proposed language. Given the expansion of the proposed subsection (b) into the final subsection (a), the Board has deleted the clause "during the statement period" from this subsection. This deletion was made to reduce confusion as to the application of the disclosure and its timing. For credit unions disclosing on a statement period basis, this disclosure would be made "during the statement period." However, for those credit unions with longer dividend periods or using the average daily balance method, the crediting period statement, often the statement after the close of the dividend period, would be the proper statement on which to make the annual percentage yield earned disclosure.

Paragraph (b)(2)—*Amount of Dividends Paid*

The proposed regulation required the periodic statement to include a dollar figure for the amount of dividends that have been paid during the statement period. Credit unions would have been required to show dividends earned during the statement period, without regard to whether such dividends had been credited to the account. Bonuses would have been excluded from this figure. The value of any bonuses could have been shown separately on the statement as additional information.

The final rule makes three changes from the language of the proposal. First, the clause "during the statement period" is replaced with the clause "on the account" in order to reduce confusion and facilitate subsection (a) of this section, as discussed in the supplementary information on subsection (b)(1), annual percentage yield earned. Second, a sentence requiring disclosure of the dollar amount of any extraordinary dividends earned during the statement period is added. Since extraordinary dividends, more commonly known as bonus dividends, are not a component of the annual percentage yield earned, or the dividend rate (or interest rate), and yet are an addition to a member's account, the Board believes that such dividends should be identified to the member. The rule requires that only the dollar amount of the extraordinary dividends paid should be disclosed as a separate figure on the statement period to which they relate.

The third change is in regard to the meaning of the term "earned" in this section. A discrepancy existed between the proposed rule preamble regarding this section and its appendix A counterpart with regard to the calculation of the annual percentage yield earned. The preamble stated that dividends earned were to be placed into the computation, while the appendix stated that only dividends paid were to be so used. Twelve commenters supported the appendix A approach. These commenters felt that rollback accounts could not use the earned dividends approach. None supported the preamble approach. Three commenters requested a clarification on the matter.

In an amendment finalized after NCUA's proposed was issued, the FRB permitted each institution to choose either the "ledger balance" or the "collected balance." These distinctions are discussed in more detail in the supplementary information regarding § 707.2(t), "periodic statement". One commenter, a national trade association, supported this FRB approach.

After taking all of the comments into consideration, the Board decided upon the final language. The Board defines the term "earned" to include dividends either "accrued" or "paid and credited." These distinctions are discussed in the supplementary information to appendix A of part 707. If the "accrued" option is chosen, then a credit union may use either the "ledger" or the "collected" balance, as discussed in the supplementary information regarding § 707.2(t), "periodic statement."

One commenter each requested clarification on additions to certificate accounts and relock certificates (those where the member has the option to "relock" at a higher rate offered by the CU at certain times during the term of the certificate account). Three commenters also requested a clarification on which balance a credit union is to use for calculation purposes, high or low, beginning or end of day, etc. The Board is demurring on these questions until the issuance of the FRB's official commentary to Regulation DD.

Paragraph (b)(3)—*Fees Imposed*

The periodic statement would include all fees of the type required to be disclosed under proposed § 707.4(b)(5) that were imposed during the statement period. For example, a monthly maintenance fee, NSF charge, or stop-payment fee would have to be disclosed. Fees not imposed in connection with the account, such as those for a cashier's check or lease of safe deposit box, could be included in the periodic statement as additional information, at the credit union's option. The regulation would *not* require fees imposed in connection with a *credit* account to be disclosed—for example, a fee imposed for accessing an overdraft feature on a share draft account—since they are related to a credit feature and are currently required to be disclosed under Regulation Z. The only change made in this section from the proposal is the addition of the clause "on the account" and the additional "and" in between the terms "part" and "imposed," so that the sentence now reads: "Fees required to be disclosed under § 707.4(b)(4) of this part and imposed on the account during the statement period." This addition was made to clarify the meaning of this subsection.

Section 268(3) of TISA requires disclosure of the "amount of any fees or charges imposed," without specifying whether the fees should be totaled or itemized. The FRB considered the following different methods for disclosing fees: (1) A single figure showing the total amount of fees; (2) an itemization of fees (perhaps also requiring the date the fee was imposed); (3) both an itemization and a total of fees; or (4) at the institution's option, an itemization, a total, or a combination of these approaches.

The FRB decided, and the Board agrees, that requiring an itemization of fees by type is the most desirable approach, and that is reflected in the final rule. A listing of all fees would enable members to see the types and amount of fees imposed during the cycle. The Board proposes to permit fees of the same type to be grouped together. For example, all ATM charges imposed during the cycle or all per-share draft fees could be stated as a single figure, or shown separately. No particular format is mandated for this disclosure; credit unions may group together fees of the same type, or indicate them individually. There is no requirement to segregate the itemization of fees from the statement of account activity. Thus, credit unions may integrate the fee disclosure with other account activity information reflected on the statement. The statement must provide sufficient detail to enable the member to identify the fee. Credit unions may use a code to identify a particular fee on the periodic statement, if codes are explained either on the periodic statement or in documents accompanying the statement. At its option, a credit union may include the date the fee was debited from the account. The proposal does not require either a total fees figure or a net earnings figure.

Paragraph (b)(4)—*Length of Period*

The proposal, adopted from the FRB's regulation, tracks the statutory language in requiring that the total number of days in the statement period be given on the periodic statement. The FRB also allows the provision of the beginning and ending dates for the statement period. The Board supports granting this flexibility to credit unions as well. The final rule permits credit unions to provide either the total number of days in the period, or the beginning and ending dates of the cycle, as long as it is clear whether or not both of these days 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.

Section 707.7—Payment of Dividends

Rollback Accounts

Proposed § 707.7 differed from the FRB's rule in that it would have permitted credit unions to calculate dividends using the rollback method, and/or to calculate dividends based on increments of par value. The final rule does not allow rollback accounts or par value calculations, and is therefore identical to the FRB's in terms of permissible dividend calculation methods.

TISA provision. Section 267 of TISA reads as follows:

§ 267. Payment of interest.

(a) Calculated on full amount of principal.—Interest on an interest-bearing account at any depository institution shall be calculated by such institution on the full amount of principal in the account for each day of the stated calculation period at the rate or rates of interest disclosed pursuant to this Act.

(b) No particular method of compounding interest required.—Subsection (a) shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting of interest.

(c) Date by which interest must accrue.—Interest on accounts that are subject to this Act shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act, subject to subsections (b) and (c) of such section.

Section 606(b) of the EFAA contains a special exemption for credit unions, which states that a credit union may begin the accrual of dividends at a later date than that described in subsection (a) if it does so with respect to all funds, including cash, deposited in the accounts, and gives notice of its interest (dividend) payment policy as required by section 606(e), 12 U.S.C. 4005(e). The legislative history of the EFAA indicates that the purpose of the exemption was to allow credit unions to continue the use of rollback accounts. The House Conference Report states that the "special rule for credit unions" was intended:

to accommodate the unique operating procedures of credit unions whose traditional accounting practices have often included partial dividends on funds not on deposit for an entire dividend period. Any such practices regarding check deposits may be continued by credit unions under this title provided that cash deposits continue to receive identical treatment. However, it is not intended that individual credit unions change existing practices in order to avoid compliance. H.R.Rep. No. 261, 100th Cong., 1st Sess. 181–182 (1987).

The Senate Report contains similar language:

This provision is intended to accommodate small institutions that credit all deposits on only the first day of each month. If deposits are received by the 10th or 15th of the month, they are credited as if received on the first of the month, and interest accrues accordingly. If deposits are received in the later portion of the month, crediting and accrual of interest begin on the first day of the following month.

This subsection is intended to include only such accounts, most of which are credit union accounts * * * S.Rep.No.19, 100th Cong., 1st Sess. 65 (1987).

In light of the legislative history, it seemed to NCUA that Congress, when it passed the EFAA, intended to allow credit unions to continue their use of rollback accounts.

Definition of rollback accounts. Rollback accounts are commonly known as "in by the 10th" accounts. In these accounts, funds deposited by the rollback date will earn dividends as of the first day of the dividend period, or the portion of the dividend period for which the credit union provides provisional dividend credit, but only if the funds remain in the account until the end of the applicable dividend calculation period. Funds that are either deposited after the rollback date or withdrawn prior to the end of the calculation period earn no dividends for the period. For example, assume that a member with an "in by the 10th" account has a balance of $1,000 at the beginning of the month. He deposits $500 on the 8th of the month, and $200 on the 11th. On the 25th, he withdraws $500. The member will earn dividends on only $1000. This is because $200 was deposited after the 10th, and $500 was withdrawn before the end of the dividend period; therefore, those funds earn no dividends. A 1992 survey conducted by NCUA showed that 62% of surveyed credit unions offer rollback regular share accounts; 31% offer rollback share draft accounts; and 11% offer rollback money market share accounts. Under the proposal, credit unions would not have been allowed to set a rollback date (the date by which funds must be placed in the account in order to earn dividends) earlier than the 10th of the month.

Background of proposed rule. Given the language in section 267(c) of TISA and section 606(b) of the EFAA, the proposed rule attempted to reconcile section 267(a), which requires calculation of dividends on the full amount of principal in the account for each day, and section 267(c), which appears to permit rollback accounts. In the proposal, NCUA attempted to reconcile these sections by banning rollback dates earlier than the tenth of any month in a rollback period, and by allowing credit unions to choose between the daily balance, average daily balance and rollback methods. NCUA's goal in the drafting the proposed rule was to grant credit unions some flexibility and, at the same time, give meaning to the mandates of TISA.

The proposed rule was drafted to cover three versions of rollback accounts: (1) Where the funds must be left in from the rollback date (e.g. the 10th) until the end of the entire dividend period in order to earn dividends; (2) where the funds must be left in from the rollback date at the beginning of any month in a multi-month dividend period until the end of the remaining dividend period; and (3) where the funds must be left in from the rollback date at the beginning of any month until the end of that month of a multi-month dividend period in order to earn that month's proportion of the dividend period's dividends. NCUA also proposed requiring specific disclosures regarding rollback accounts in responses to oral requests, the account opening disclosures, periodic statement disclosures and advertising disclosures. These disclosures were proposed to educate members as to the negative and positive attributes of rollback accounts, and to encourage credit unions to convert the accounts to the daily balance or average daily balance methods. NCUA also requested comments on alternatives to the rollback method, such as increased use of minimum opening account balances or minimum account balances.

Comments on proposed rule. Two hundred forty-three letters commented on whether the Board should allow credit unions to continue offering rollback account. As expected, the majority of those commenters (168) favored allowing rollback accounts. Their reasons included: Members like and understand the method; rollback accounts favor members (either because of higher rates or because of the rollback accrual feature); it is too expensive to pay daily dividends; and some credit unions do not have the capacity to calculate daily dividends and/or will close or merge if forced to switch. Some of the commenters who supported rollbacks provided a legal analysis of the Board's authority to continue these accounts and agreed with the Board's legal analysis in the proposed rule.

Seventy-five commenters said that rollbacks should be banned. Their reasons included: Rollbacks are unfair to members; the method is outdated and no longer necessary; continuation of rollbacks will generate bad publicity and harm credit unions; and the rollback method is really low balance. Two of these commenters argued that rollback accounts are beyond the Board's authority and contrary to TISA and its purposes.

Six of those opposed to rollbacks and six of those in favor thought that if the Board banned rollback accounts, small credit unions would need either an exemption from the rule or some type of phaseout. Seven of those opposed to rollbacks and three of those in favor suggested a phaseout for other than small credit unions, if rollbacks were banned.

Final rule. In the interpretation of statutes, the legislative will or intent is the all-important or controlling factor. 73 Am.Jur.2d *Statutes* section 145 (1974). In addition, the sense of the words which most fully promotes the policy of the legislature in the enactment of the law is the one that should govern. 73 Am.Jur.2d *Statutes* section 153 (1974). Nor should an interpretation of a statute be given that violates the spirit of the act. 73 Am.Jur.2d *Statutes* section 154 (1974). TISA's primary purpose is to enable consumers (members) to make informed decisions about deposit accounts, by promoting uniformity in the disclosure of account terms and conditions. (See 12 U.S.C. 4301.) Rollback accounts are so different from the types of accounts sanctioned by TISA (daily balance and average daily balance accounts—see discussion *supra*), that no meaningful comparison can be made. The stated annual percentage yield (APY) for a rollback account makes so many assumptions (e.g., funds are in by the tenth day of the month, funds remain in the account through the end of the dividend period) and may be so inflated that it can not realistically be compared with the APYs for other accounts. Therefore, allowing rollback accounts would impede TISA's stated policy of uniform disclosures and informed comparisons, and thus would neither fulfill Congressional intent nor comply with the spirit of TISA.

Moreover, TISA clearly bans low balance accounts, and other accounts that do not pay dividends on the full amount of principal in an account each day. The legislative history of section 267(a) of TISA states that the provision is intended to prohibit institutions from using certain other balance computation methods, such as the low balance or investable balance methods of computing interest. The investable balance method of paying a disclosed rate on only 88% of the funds deposited, for example, was clearly a target of the legislation. The low balance method pays a disclosed rate only on the lowest amount of principal in the account on any day in the period, and was specifically mentioned in the legislative history as one of the methods that TISA was intended to prohibit. (See H.Rep. No. 202, 102d Cong., 1st Sess., 13 (1991). The House Report goes on to state:

> It is the Committee's intent that section 7(a) [which became section 267(a) of TISA] be construed broadly to prohibit the use of any other methods that do not pay the same amount of interest, based on the full amount of principal in the account each day, as do either the average daily balance or daily balance methods. *Id.*

Some commenters who favor rollbacks highlighted the grace period, or rollback accrual, feature of such accounts (i.e., funds deposited as late as the 10th will earn dividends from the 1st, *if* not withdrawn before the end of the dividend period), which *may* result in "extra" dividends. The Board recognizes that this feature of the account can benefit some members, provided that they otherwise comply with the account's restrictions. However, despite this positive aspect, the fact remains that rollbacks also have a low balance feature: Any funds withdrawn before the end of the dividend period earn no dividends at all, no matter how early in the period they were deposited. (For example, funds deposited on January 1 and withdrawn on January 30 earn no dividends, because they are not in the account at the end of the dividend period, January 31.) Rollbacks are essentially low balance accounts with a grace period. In the Board's view, the benefit of the grace period does not outweigh the negative impact (and, under TISA, the illegality) of the low balance feature. Thus, rollback accounts are clearly contrary to TISA's mandate that institutions pay interest (dividends) on the full amount in an account for every day of the dividend period.

It is a principal rule of statutory interpretation that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result. 73 Am.Jur.2d *Statutes* section 249 (1974). A construction resulting in absurd consequences as well as unreasonableness should be avoided. 73 Am.Jur.2d *Statutes* section 265 (1974).

Having reevaluated the issue, NCUA has concluded that section § 267(c) is incompatible with the rest of TISA (especially § 267(a)) and with its purpose and spirit, and there is no way they can be read together in a way that would give effect to each. Under the foregoing rules of statutory construction, section 267(a) overrides section 267(c).

Furthermore, section 272(b) of TISA (12 U.S.C. 4311(b)) mandates that the Board's regulation be "substantially similar to" Regulation DD, but permits the Board to take into account "the unique nature of credit unions and the limitations under which they may pay dividends." The Board believes that this authority encompasses and incorporates the authority granted to the FRB in section 269(a)(3) of TISA, 12 U.S.C. 4308(a)(3), which permits the agency's rule to contain such classifications, differentiations, or other provisions, and to provide for such adjustments and exceptions for any class of accounts as, in the judgment of the agency, are necessary or proper to carry out the purposes of TISA, to prevent circumvention or evasion of TISA's requirements, or to facilitate compliance with TISA's requirements.

There is no question that part 707 must be substantially similar to Regulation DD. The issue which the Board must resolve is the degree to which part 707 may differ from the FRB's rule, and what criteria must be met in order to justify any differences. Initially, the Board interpreted its authority under sections 272(b) and 269(a)(3) of TISA, together with the "exemption" language of section 267(c) of TISA, as broad enough to permit continuation of rollback accounts. After consideration of the comment letters and further review of TISA and its legislative history, policy, spirit and goals, the Board finds that the better legal view is that rollback accounts are inconsistent with TISA's language and purpose, and should be banned.

As discussed above, the Board's authority to vary its rule derives from two sections of TISA: Sections 272(b) and 269(a)(3). These two sections must be read together. Thus, any variation from the FRB's rule and the statute, must (1) arise out of the unique nature of credit unions and the limitations under which they may pay dividends, and (2) be necessary or proper to carry out the purposes of TISA, prevent circumvention or evasion of TISA, or facilitate compliance with TISA's requirements. For the following reasons, the Board does not believe that allowance of rollback accounts meets these criteria.

Some commenters argued that rollback accounts are unique to credit unions. Although rollback accounts are unquestionably widespread in the credit union community, the commenters offered no proof that they are actually *unique* to credit unions. Even if it were shown that rollbacks are unique to credit unions, the Board does not believe that the first criterion would be satisfied. In order to meet that criterion, a practice must arise from the unique *nature* of credit unions, that is, it must be related to one of the characteristics that make a credit union a credit union. The unique characteristics of credit unions are discussed in section II,A of this supplementary information. The Board does not believe that rollback accounts are logically related to any of those unique characteristics. The Board is not persuaded that rollbacks are an aspect of the unique *nature* of credit unions. At most, they are a unique (but voluntary) *practice* of many credit unions. That is not sufficient to meet the first test.

Alternatively, the first criterion would be satisfied if rollbacks were related to a limitation under which credit unions may pay dividends. The Board does not believe that rollbacks can be tied to the limitations on payment of dividends. The word "limitation" is defined as "restriction or circumspection." *Black's Law Dictionary* (5th Ed., 1979). An example of the limitations under which credit unions may pay dividends is the nature of dividends, that is, that dividends are paid out of current income and available earnings after required transfers to reserves at the end of a dividend period. The nature of dividends is a statutory restriction on the way that credit unions pay dividends. The rollback method, by contrast, is a purely discretionary method of determining the balance on which dividends will be paid. As one commenter noted, "there is no indication in the language or legislative history of TISA that Congress intended for the NCUA Board to take into account the manner in which credit union may choose to pay dividends, any more than the FRB could have taken into account the manner in which banks might have chosen to pay interest when writing the FRB rule." The Board does not believe that rollbacks satisfy this alternative test for the first criterion.

Nor do rollback accounts satisfy the second test for deviation from Regulation DD. The second test is that the change will carry out TISA's purposes, prevent circumvention of its requirements, or facilitate compliance. In the Board's opinion, rollback accounts not only fail to meet this standard, but actually undermine it.

The Board has been very concerned over the potential adverse effect that TISA and part 707 will have on small credit unions that have insufficient computer capacity to provide the statement disclosures required under § 707.6. Some of these credit unions still handpost dividends to their member's accounts. Unfortunately, Congress, when it enacted TISA, gave the Board little leeway to mitigate the statute's impact on such credit unions. See supplementary information on § 707.7(c), date dividends begin to accrue. As stated in that section, it is the Board's intention that NCUA work with these credit unions to mitigate and alleviate any burdens placed upon such credit unions by part 707. To this end, NCUA will work with the credit union trade associations, leagues, state regulators, credit unions and other interested parties, to make the transition as easy as possible. In addition, the Board is having NCUA staff study the possibility of providing judicious waivers of the fixed asset regulation, 12 CFR 701.36, on a case-by-case basis to those small FCUs having need to automate account operations due to TISA and part 707.

Credit unions that currently use rollback accounts and are concerned that members will increase their transactions, thereby subjecting the credit union to greater costs, have several options. They can switch the rollback accounts to minimum balance accounts, or impose a transaction fee for transactions in excess of a certain number. They could also impose higher opening balance requirements. Some credit unions offer a type of term share account that permits the addition of funds at any time, but imposes a penalty for early withdrawal. Perhaps more credit unions will adopt similar accounts. The Board believe that these alternatives will help to hold down credit union expense, while at the same time support the long time credit union goal of promoting thrift, a goal that many commenters argued was furthered by rollback accounts. Moreover, the Board is confident that credit unions will develop more account products that satisfy TISA's requirements, meet their members' needs, and make good business sense.

Par Value Calculations

Prior to enactment of TISA, an FCU has been permitted to pay dividends on par value increments as long as the par value of its shares is $5 or less. This authority derives from section 117 of the FCU Act, which states that if the par value of a share exceeds $5, dividends shall be paid on all funds in the regular share account once a full share has been purchased. 12 U.S.C. 1763. Based on that section and its legislative history, NCUA has permitted credit unions with par values of $5 or less to pay dividends on all types of share accounts based on increments of par value. If par value is $5 and an account has a $24 balance, an FCU may pay dividends on $20, rather than the entire $24. However, if par value is $10 and an account has a $24 balance, dividends must be paid on the entire $24, rather than on $10 increments.

The proposal (proposed § 707.7(b)) would have allowed FCUs with par values of $5 or less to continue paying dividends based on increments of par value. As discussed in the previous section (on rollback accounts), TISA mandates that dividends be paid on the full amount of funds in an account for every day of the dividends period. Under the par value method, dividends may be paid on less than the full amount in the account. Therefore, it appears that the par value method is outlawed by TISA.

However, since the par value method is authorized by one statute (the FCU Act) and banned by another (TISA), the question arises of which statute prevails. Where two statutes are irreconcilable and inconsistent, the later enactment (TISA) prevails as the last expression of legislative intent, and the inconsistent provisions of the prior statute (the FCU Act) are treated as repealed. 73 Am.Jur.2d Statutes section 255 (1974). The Board finds that TISA has impliedly repealed the par value dividend authority of section 117 of the FCU Act, and that par value calculations are no longer permissible. For these reasons, the final rule does not permit par value calculations.

Paragraph (a)—*Permissible Methods*

Paragraph (a)(1)—*Balance on Which Dividends Are Calculated*

Section 707.7(a) implements section 267(a) of the statute, which provides that dividends on dividend-bearing accounts (and interest on interest-bearing accounts) shall be calculated on the *full amount of principal in the account for each day* of the stated calculation period at the rate disclosed (emphasis added). Although a literal reading of section 267(a) might appear to require credit unions to calculate dividends by using a daily balance calculation method (also known as the day-in-day-out method or day-of-deposit-to-day-of-withdrawal method), the legislative history confirms that the Congress considered the average daily balance method an acceptable alternative to the daily balance method. The Board has followed the FRB in allowing both methods.

The Board believes that permitting credit unions to use either the daily balance method or the average daily balance method is consistent with the purpose of the legislation which requires that members be paid dividends on the full amount of principal in the account each day. In addition, the statute requires disclosure of the balance computation method, which would be unnecessary if only one method were allowed.

Both methods require credit unions to compute dividends by applying a periodic rate to the full amount of principal in the account each day. In the daily balance method the credit union applies a periodic rate to the exact daily balance. In the average daily balance method the credit union adds the full amount of principal in the account each day of the period or cycle, divides that figure by the number of days in the period or cycle, and applies a periodic rate to the result. Assuming the same compounding and crediting frequency, the dividends calculated under either method would be identical in an account with little or no account activity in the period. In most cases, even where there is significant account activity, both methods will produce the same or substantially the same amount of dividends. In some instances, the daily balance method produces a slightly higher return, and in other situations, the average daily balance method produces a slightly higher return. In all cases, under the annual-percentage-yield calculation for the periodic statement, any differences in these methods would be captured by that figure.

Tiered rate accounts. There is one circumstance in which the daily balance and average daily balance methods can produce more significant differences in dividends: tiered-rate accounts. To illustrate this point, assume daily compounding occurs for the following account:

Simple dividend rate (percent)	Deposit balance to earn
	Rate (with the rate paid on the full balance).
5.00	\$.01–<\$5,000.
6.00	\$5,000 and higher.

The two methods can produce differences in dividends, depending on account activity—in particular, depending on whether the average daily balance falls above or below the break point, in this case, \$5,000.

For purposes of illustration, assume that the principal balance in the account for January and February is \$5,000 for the first 20 days of each month and \$4,000 for the remaining days of the month. (Dividends remain on deposit until the end of each month.) The daily balance method produces \$22.52 in January and \$20.86 in February. The average daily balance method produces \$19.77 in January and \$18.12 in February. In this example the daily balance method generates greater dividends (\$2.75 and \$2.74 per month) because the average daily balance falls below the break point of \$5,000.

As a second illustration, assume that the balance in the account for each month is \$4,500 for the first 20 days of the month and \$6,500 for the remaining days of the month. In this example, the average daily balance method generates greater dividends (\$2.49 and \$2.48 per month) because the average daily balance falls above the break point.

As these examples illustrate, in some instances for tiered-rate accounts, the daily balance method produces a higher return, and in other situations the average daily balance method produces a higher return.

In spite of these differences, the Board believes that credit unions should be permitted to use either the daily balance or the average daily balance method. First, in many cases, the two methods produce the same or a substantially similar return. Second, where the results differ, neither one consistently produces a higher return. Third, under the proposed annual-percentage-yield calculation for the periodic statement, any differences in these methods would be captured by that figure. Fourth, credit unions will disclose the method they use under § 707.4(b) so that members who prefer one method over the other have the necessary information on which to base their choices. Fifth, the legislative history accompanying the legislation contemplates the use of either method. Finally, requiring credit unions to use a daily balance method could impose significant costs on some credit unions that would have to change from the average daily balance method without any real benefit to members.

"Collected" and "ledger" balances. When a credit union uses the accrual method of earning dividends or interest, they may use either a "collected" or "ledger" balance. See supplementary information on § 707.2(t), periodic statement definition.

Use of 365-day basis and leap year. It should be noted that the FRB ultimately decided to permit dividends to be computed only on a 365 or 366 (in a leap year) day year, as opposed to a 360 day year. Based on Congressional intent, NCUA also proposed that method. Credit unions would not be required to pay dividends on accounts during a grace period, nor for the period after maturity of a nonrollover term share account. Nor would credit unions be required to pay dividends on any principal or dividends remaining in an account after an account is closed, such as when an account is closed by the member writing a final check that does not match exactly the account balance. The Board requested comments on these issues, but no comments were received.

Therefore, the Board has decided to follow the FRB's final position. For example, for a one-year certificate term share account, dividends must be paid on a 365-day basis, since dividends must be paid each day funds remain in the account. In addition, credit unions are permitted to apply a periodic rate of 1/366 (or 1/365) of the dividend rate for 366 days in a leap year, when an "extra" day of dividends will be paid for the account. Credit unions may, however, apply a daily periodic rate that is greater than 1/365 of the dividend rate. For example, a credit union may use a daily periodic rate of 1/360 of the dividend rate, as long as it is applied 365 days a year. The Board will not permit dividends to be computed using a "360/360" basis (that is, using a periodic rate of 1/360th of the dividend rate and applying that figure to only 360 days in a one-year account). The Board believes this practice, which pays dividends for only 360 days in a year and not 365 days, is not permissible because it fails to apply the disclosed rate each day of the year.

Credit unions need not pay dividends during any grace period offered by them for an automatically renewable term share account if the member decides during the grace period against rolling over the funds. Nor need credit unions pay dividends after an account has matured. The Board believes that TISA does not require credit unions to pay dividends after a particular account relationship has ended, unless so committed to by a credit union (such as placing the funds into another dividend-bearing share account). Thus, if a member with an automatically renewable term share account chooses not to renew the term share account, the credit union may pay dividends for a period of time after maturity even though the term share account is not renewed, or the credit union may consider the account to be non-dividend bearing after maturity. Similarly, credit unions may, but are not required to, pay dividends following the maturity of a term share account that does not automatically renew.

The Board also believes that credit unions are not required to pay dividends on any principal or dividends left in an account after an account is closed. Many members "close out" an account by mail, but unintentionally leave in a small amount of funds. The Board does not believe credit unions must continue to pay dividends on any such amount if the account relationship has ended. However, it should be noted that unless a member withdraws from membership, an FCU must give the member 6 months to bring his membership share account back to par before closing the account. See *NCUA Standard FCU Bylaws*, Art. III, section 3. Similar state bylaw provisions would also entail leaving a member's account open until the close of the required period.

Paragraph (a)(2)—*Determination of Minimum Balance To Earn Dividends*

In addition to prohibiting use of the straight low balance method of balance calculation, the Board believes that section 267(a) prohibits use of a "low balance" type of method to determine if a member has met a minimum balance requirement to earn dividends. Credit unions are permitted under the law to set minimum balance requirements that must be met for the member to earn dividends, or to earn a specified rate for tiered-rate accounts. For example, a credit union may choose to pay a 5.00% dividend rate on an account only for those days that a minimum balance of $500 is maintained. The Board believes that the statute further permits a credit union to provide that it will not pay dividends on the account *for those days* the balance drops below the required minimum balance.

Under the final rule, a credit union using a daily balance method may choose to pay dividends on an account for only those days a minimum balance is maintained. (Similarly, a credit union using an average daily balance method may choose to pay dividends for the period only if a specified average daily balance for the period is met.) If this practice were not permitted, the Board believes significant and fundamental pricing changes would be made to accounts, many of which could be adverse to the interests of members. For example, tiered-rate and high minimum balance accounts that typically pay a higher rate of dividends might not be as available to members and potential members. Therefore, the rule permits a credit union that uses a daily balance method to provide that it will not pay dividends on the account for those days the balance drops below the required daily minimum balance. (Similarly, a minimum average daily balance may be established for credit unions using that method.)

The Board does not believe, however, that the statute permits a credit union to provide that the member does not earn any dividends for a given period unless the member maintains a minimum balance for the *entire period*. For example, under the proposal, a credit union may not provide that a member will earn a 5.00% dividend rate only if the consumer maintains a minimum balance of $500 for *each day* of a specified period or cycle. Such a practice, in effect, uses a low balance computation method to calculate whether dividends are earned on an account. Permitting such a practice would enable a credit union to refuse to pay dividends even if—under the example above—a member maintained a $10,000 balance for 29 days in a cycle, but permitted the balance to drop below $500 for one day in the same cycle.

Similarly, the Board does not believe that credit unions could refuse to pay dividends on a portion of a balance once a member has met any required minimum balance. If a credit union sets its minimum balance requirement to earn dividends, for example, at $300 and a member deposits $500, the credit union must pay the stated dividend rate on the full $500, and could not pay dividends only on $200 (the amount in excess of the minimum) of that deposit. The Board believes that allowing such a practice would be contrary to the statutory requirement and the intent of the Congress to require payment of dividends at the disclosed rate on the *full amount* of principal in the account each day.

A related issue arises with regard to tiered-rate accounts and calculation of the balance on which dividends are paid. For example, assume that a credit union pays and discloses a 5.00% dividend rate on balances below $5,000, and a 6.00% dividend rate on balances of $5,000 and above. The Board believes the statute would *not* permit a credit union to pay the 5.00% rate for the entire cycle if the balance dropped below $5,000 for a few days during the cycle. As another example, assume that a member maintained a $10,000 balance for 29 days in a cycle, but permitted the balance to drop to $4,999 for two days. The Board does not believe that the statute would permit the credit union to pay only 5.00% on $10,000 for 29 days, since the full amount of principal in the account for 29 days was actually $10,000 and should earn the stated 6.00% rate.

Likewise, the Board does not believe a credit union that uses an average daily balance method to determine the balance needed to earn dividends is permitted to refuse to pay dividends on the average balance if the member fails to maintain a daily balance of, for example, $500 for each day of the cycle. This is similar to using a low balance method of computing interest. Thus, the regulation requires that a credit union use the same method to determine any minimum balance required to earn dividends as it uses to determine the balance on which dividends are calculated. The rule further provides that a credit union may use an additional method to determine the minimum balance to earn dividends, as long as that second method is unequivocally beneficial to the member. Credit unions are not permitted under this provision to require consumers to maintain both a daily minimum balance and an average daily balance to earn dividends. The Board views this last practice as an impermissible low balance method.

For further discussion of minimum balance requirements, see § 707.4(b)(3)(i) and the supplementary information thereto.

Paragraph (b)—*Compounding and Crediting Policies*

Section 707.7(b) of the proposed regulation implements section 267(b) of the statute. TISA does not mandate the frequency of any compounding. Thus, credit unions may compound biannually, annually, quarterly, monthly, daily, continuously, or on any other basis. The compounding frequency is required to be disclosed under proposed § 707.4(b)(2)(i) and is factored into the computation of the annual percentage yield. (See the discussion of the annual percentage yield in the supplemental information accompanying Appendix A.)

Nor does § 707.7(b) mandate a specific crediting policy. Thus, credit unions could credit dividends earned on the account on an annual, semiannual, quarterly, monthly, or other basis. The credit union's crediting policy must be disclosed under § 707.4(b)(2)(i). A credit union may credit or post dividends to the account at any frequency, thus establishing the intervals at which the member can withdraw such dividends. However, credit unions may only credit declared dividends. A credit union may not credit payments of anticipated dividends until such dividends have been formally declared from available current and undivided earnings after required transfers to reserves at the close of a dividend period. Therefore, the crediting date of a credit union would normally be the dividend declaration date. However, sometimes there is a lag between the declaration of a dividend and the action distribution (or crediting) of the dividend to the member of that dividend. See supplementary information regarding § 707.2(k). Credit unions could change the crediting date by altering their dividend periods.

Unlike other financial institutions that pay interest on accounts, credit unions may treat undeclared, uncredited dividends as unearned. Legally, members only have an interest in dividends once declared. Nor does this provision require the credit union to permit the member to withdraw dividends that are declared before the dividend distribution date. If the member withdraws funds or closes a dividend-bearing account before the dividend distribution date, the credit union may delay payment of the accrued dividends until the dividend distribution date. Finally, for dividend-bearing term share accounts, credit unions may assess a penalty for early withdrawal, as discussed in the supplemental information accompanying § 707.4(b)(6)(ii). This interpretation is based on the unique nature of credit unions and the limitations under which dividends are paid. It does not apply to interest-bearing accounts in credit unions.

Because this position varies somewhat from Regulation DD, the Board solicited comments on it. Four comments were received. Three supported the proposal. One opposed holding a member's dividends until the distribution date. The final rule is identical to the proposal.

In addition, credit unions offering interest-bearing accounts may reserve the right not to pay accrued but uncredited interest for an account if a member closes the account prior to the time accrued interest is credited to the account. However, the Board believes that credit unions must pay all accrued interest to members even if some funds are withdrawn prior to the crediting date, as long as the member does not close the account. Otherwise, the effect would be substantially the same as permitting credit unions to pay interest based on the low balance method, a result clearly unintended by the Congress. Although credit unions may not fail to pay accrued interest on withdrawn funds if the account remains open, credit unions need not post or credit the accrued interest until the established posting or crediting date, nor must they permit the member to withdraw interest that is earned but not yet credited. If the member withdraws funds before interest is credited (but does not close the account), the credit union may delay payment of the accrued interest until the crediting date. This provision, of course, does not require a credit union to pay interest for those days the member fails to meet the minimum balance requirement.

Paragraph (c)—*Date Dividends Begin To Accrue*

Section 267(c) of the statute generally requires that depository institutions begin to accrue interest for *all* accounts no later than the business day specified in § 606 of the Expedited Funds Availability Act (EFAA) (12 USC 4005). Thus, the accrual of dividends rules in the EFAA apply to nontransaction accounts, such as term share accounts, as well as to transaction accounts covered by the EFAA. The EFAA and Regulation CC generally require a depository institution to begin accruing interest or dividends when the institution receives "provisional" credit. The Board believes that a consistent rule is essential for determining the principal balance on which dividends accrue. The final rule permits credit unions to use the methods set forth in Regulation CC for determining the principal balance. If a credit union accrues dividends on funds represented by a deposited check that is later returned due to insufficient funds on deposit, or for another reason, the credit union would not be required to pay dividends for the time period the check was outstanding.

While the EFAA establishes the time that credit unions must *begin* to accrue dividends, because of the general rule in section 267(a) of TISA that dividends must be computed on the full amount of principal in the account for each day, the Board believes that credit unions must accrue dividends on funds up to the date of withdrawal from the account. Thus, if a share draft written by the member on an account is debited from the account by the account-holding credit union on a Wednesday, the credit union must accrue dividends on those funds on deposit through Tuesday. (Because the share draft is debited on Wednesday, the balance in the account that day has been reduced. Thus, the Board believes that the credit union need not pay dividends for Wednesday.)

TISA clearly outlaws low balance accounts. In the preamble to the proposed rule, the Board acknowledged that a number of credit unions use low balance accounts, and asked (1) whether they are unique to credit unions and should be allowed; and (2) how to handle credit unions (particularly nonautomated credit unions that can not easily handle the requirements of the statute and the regulation) that now use low balance, if those accounts are banned.

A few commenters asked that the Board allow low balance accounts. Only two of those argue that low balance is unique to credit unions. Two others said that low balance should be allowed for small, nonautomated credit unions. Two commenters said that low balance should be allowed for share draft accounts, and suggested that members would rather have a low balance account than pay a large fee. One said that credit unions should be able to use any balance computation method they choose, provided they disclose it. Four commenters said that the Board should ban low balance accounts because they are anti-consumer.

One trade association said that small, nonautomated credit unions should be permitted to continue low balance accounts, under "the broad authority" granted NCUA by TISA. A number of commenters thought that credit unions with low balance accounts should be allowed to switch to rollback accounts. (This is no longer an option, as the final rule does not permit rollbacks.) Two suggested a delayed effective date for nonautomated credit unions, to give them time to switch. Others suggested a delayed effective date. Eleven commenters favored either full exemption, partial exemption, or a delayed effective date for small and/or nonautomated credit unions. Five suggested some type of phase-in or phase-out.

One commenter said that switching to permissible dividend calculation methods would create a financial burden. Another said that it would be impossible for handposting credit unions to switch to daily balance or average daily balance. Three credit unions said that they might have to close or merge, but it was unclear whether because of a ban on low balance or because of periodic statement requirements. One commenter, citing credit unions' "unique operational constraints," suggested that nonautomated credit unions be exempted from the APYE (periodic statement) disclosure requirements. One asked for state or federal assistance in making any necessary switch. Another said that credit unions that showed a burden due to volunteer staff, lack of technology and/or financial limitations should be allowed a delayed effective date (or a complete exemption).

One commenter thought that nonautomated credit unions should be treated the same as all others. The commenter said that if such credit unions can not "conform to competitive as well as legislative issue and pressures," they should not continue operating to the detriment of their members.

The Board is not persuaded that low balance accounts are unique to credit unions in general, or to small, nonautomated credit unions. For that reason, the Board does not believe that it has the authority to override TISA's ban on low balance accounts, even to the extent of allowing exemptions for credit unions that meet stringent criteria (e.g., size, volunteer staff, handposting) to show that they are unable to comply with the statute and regulation.

The Board has attempted to mitigate, to the extent possible, the regulation's adverse impact on credit unions, particularly those small, nonautomated credit unions that use the low balance or rollback methods of dividend calculation and currently lack the capacity to switch to acceptable methods and otherwise comply with TISA. Although the Board believes that TISA outlaws both low balance and rollback accounts, it recognizes that small credit unions' transition to acceptable methods of dividend calculation will be difficult. It is the Board's intention that NCUA work with credit union trade associations, leagues, state regulators and credit unions themselves, to make that transition as smooth as possible. The Board is also aware that some credit unions may need waivers of NCUA's fixed asset regulation, 12 CFR 701.36, so that they can purchase computers in order to perform the dividend calculations necessary for compliance with TISA and part 707. Although the Board does not believe that a blanket waiver of § 701.36 is appropriate, NCUA will take the issue into account in working with credit union to achieve full compliance.

Section 707.8—Advertising

The Board requested comments on several specific issues raised by this section of the proposed rule. Those comments are discussed in the supplementary information for the section to which they relate. A number of letters also commented on the proposed advertising disclosures, generally. Four agreed with the proposal in its entirety, calling the disclosures appropriate, or "clear and accurate." Sixteen said that the advertising disclosures were overly burdensome and/or too costly. Two asked that this section be deleted, and another said that advertising restrictions should not apply to credit unions.

Several commenters suggested that the advertising disclosures should be deleted or limited due to space limitations or complexity. One commenter suggested a much simplified alternative. Nine others thought that the disclosures would confuse members, or that they were too complicated or excessive. One noted that it would be easy to violate this section as proposed. Two commenters said that this section was unnecessary. One thought that it placed credit unions at a competitive disadvantage.

A number of the commenters who addressed those issues, as well as some commenters who suggested full or partial exemptions for various types of communications (see supplementary information to § 707.2(b)), favored inclusion in advertisements of language to the effect that members should contact the credit union for complete disclosures. The Board does not believe that such language would be an adequate substitute for the required advertising disclosures.

The advertising disclosures required by the final rule will be shorter and less complex than under the proposal, because rollback accounts (which would have required a lengthy and complicated additional disclosure) and par value calculations are prohibited under the final rule, and therefore no disclosures need be made on those issues. Also, in response to comments received, the Board has simplified the rule and reduced the required disclosures by deleting the proposed disclosure on the nature of dividends. The specific reasons for these changes are discussed below.

This section incorporates the advertising provisions of section 263 of TISA. While TISA's disclosure rules apply to accounts of *all* depository institutions, section 263(a) of TISA's advertising provisions is phrased in terms of accounts offered by *insured* depository institutions. (Sections 263 (b) and (c) of the advertising provisions, however, are not limited to insured depository institutions.) The Board's final rule, adopted from the FRB's regulation DD, applies all of the advertising provisions to all credit unions, whether federally insured or not. The Board believes that TISA's purposes are furthered if all account advertisements provide uniform disclosures to compare accounts, and does not believe it desirable for only some advertising rules to apply to nonfederally insured credit unions. The Board notes that many of the TISA advertising requirements were already suggested for FCUs by the NCUA in § 5150.8 of the *Accounting Manual for FCUs*.

As addressed in § 707.2(a), the advertising rules apply to share and deposit brokers, in addition to credit unions. Thus, if a broker places an advertisement that offers to members an interest in an account at a credit union, the advertisement is covered by this section, even if the account is held by or on behalf of the broker. Of course, this section also covers any advertisement placed by a broker in which the account at the credit union will be held directly by the member.

The Board also notes that, in this same rulemaking, conforming changes have been made to the advertising requirements for FCUs in 12 CFR 701.35(c) and to FCUs and FISCUs in 12 CFR 740.2. These changes are discussed further in the pertinent supplementary information sections. Basically, the provisions of this section override anything to the contrary in other federal or state laws.

Paragraph (a)—*Misleading or Inaccurate Advertisements*

TISA and the regulation prohibit credit unions from making misleading or inaccurate advertisements. Since section 271 of TISA extends the possibility of civil liability to advertising violations, the Board is interested in construing the term "misleading" appropriately and requested comments concerning any guidance that might be given in the final rule to credit unions on this issue. No comments were received on this point. Therefore, following the FRB's lead, use of the term "profit" is prohibited in advertisements for deposit accounts. However, since dividends are basically a return of the member's investment, the

Board has not applied the prohibition to dividend-bearing accounts.

Advertising "Free" Accounts

Section 263(c) of TISA prohibits a credit union from advertising an account as a free or no-cost account if: (1) A regular service or transaction fee may be imposed; (2) a fee may be imposed if any minimum balance requirement is not met; or (3) a fee is imposed if the member exceeds a specified number of transactions. The final rule, adopted from Regulation DD, captures these rules for both dividend-bearing and interest bearing accounts, but provides a different organizational approach. Credit unions are not permitted to describe any account as "free" or "no-cost" (or words of similar meaning) if any "maintenance or activity" fee might be imposed on the account. A maintenance or activity fee includes, for example, periodic service charges; per-share-draft fees; fees imposed to deposit, withdraw or transfer funds; and fees to receive copies of share drafts written on the account. It also includes fees imposed if a minimum balance requirement is not met or if a transaction limit is exceeded. A maintenance or activity fee does not include fees such as stop-payment-fees or fees for returned share drafts, or fees unrelated to the account such as a fee for purchasing a cashier's check or traveller's checks. Such fees also do not include share draft or check printing fees. See supplementary information regarding § 707.5(a)(2)(ii).

However, since TISA prohibits references to "accounts" as free, the regulation permits credit unions to refer to a specific service as "free" or "no cost" or words of similar import. For example, credit unions that offer free transactions at their ATMs could advertise that fact. If an account or an account service is free only for a limited time—for example, for the first year that an account is open—this limitation must be stated. The Board believes that this approach reflects the requirements of TISA, yet allows credit unions to provide accurate and useful cost information to members about account features or services.

Paragraph (b)—*Permissible Rates*

Section 263(a) of TISA provides that a reference to a specific dividend rate, yield, or rate of earnings in an advertisement triggers a duty to state certain additional information, including the annual percentage yield. Like the proposal, the final rule requires that, for advertisements, if any rate or yield is stated it must be the "annual percentage yield," using that term. However, credit unions are permitted to abbreviate the annual percentage yield as "APY" if the term is printed out or stated in full at least once in an advertisement. For example, if an advertisement states "we offer a 5.25% Annual Percentage Yield (APY)," it may refer to that rate as the "APY" elsewhere in the advertisement. No such abbreviation is yet permissible for the dividend rate. One commenter requested that the Board permit "dividend rate" to be abbreviated "DR." The Board demurs on this issue until the FRB issues its Official Commentary to Regulation DD.

Except for the dividend rate, as explained below, no other rate or yield (such as an "average" or "aggregate" percentage yield) can be included in an advertisement. The Board believes that allowing credit unions to state rates or yields in addition to the annual percentage yield would conflict with TISA's stated purpose of providing uniform disclosures to enable members to compare accounts. Also, the Board is concerned that permitting other rates to be stated in addition to the annual percentage yield would result in advertisements with a confusing array of terms and numbers. Moreover, the "dividend rate," using that term, can appear in conjunction with (but not more conspicuously than) the annual percentage yield. If a dividend rate is stated it must be the one that corresponds to the particular annual percentage yield provided.

If a credit union states an annual percentage yield in an advertisement for a tiered-rate account, it must state all of the annual percentage yields for each tier, including those required to be shown as a range, as well as the corresponding minimum balance requirements. (See appendix A for annual percentage yield calculations for tiered-rate accounts.) If dividend rates are stated, each dividend rate must appear in conjunction with the applicable annual percentage yield.

Paragraph (c)—*When Additional Disclosures Are Required*

This section of the final rule is incorporated from Regulation DD. Section 263(a) of TISA requires additional information to be provided in account advertisements if the advertisement refers to a specific dividend rate, yield, or rate of earnings. TISA also imposes special format rules in certain cases to ensure that a member's attention is drawn to terms such as any differences in the annual percentage yield if a minimum balance is not met. The rule generally follows TISA's approach for the format and content of advertisements, but simplifies the order of the information provided.

The final rule differs from the proposal in that it does not require advertising disclosures for rollback accounts, par value calculations, or the nature of dividends. Disclosures on those issues had been added to the proposed rule to cover unique credit union practices. Rollback accounts and par value calculations are not permitted under the final rule (see discussion under the supplementary information regarding § 707.7(a)), and therefore no disclosures are necessary.

The final regulation also eliminates the requirement for an advertising disclosure to the effect that dividends are based on current income and available earnings, after required transfers to reserves at the need of a dividend period. Many commenters opposed inclusion of this disclosure not only in advertisements, but throughout the rule (see discussions in the supplementary information regarding § 707.3(e) and § 707.4(b)(8)). Commenters pointed out that an advertising disclosure on the nature of dividends would be difficult for members to understand, expensive, and alarming to members, and would increase the potential for civil liability. Based on these comments, the Board believes that the negative aspects of an advertising disclosure on the nature of dividends outweigh its utility, and that members will be adequately informed by the complete disclosure on this subject included in the written account disclosures.

The final regulation provides that a reference to an annual percentage yield "triggers" advertising disclosures. Since other rates are not permitted (except for the dividend rate, which in turn requires a statement of the annual percentage yield), the regulation does not include any other "rate triggers." (See, however, the discussion of bonuses in the supplementary information on § 707.8(d).)

There is no requirement that account advertisements state an annual percentage yield figure. Stating other information in advertisements—such as "one, three, and five year certificates available" or "high rates available"—does not trigger the duty to state other terms of the account, due to the lack of specific information regarding applicable rates. Furthermore, the Board believes, as does the FRB, that a statement such as "we pay the rate available for 90-day U.S. Treasury bills" will only be deemed a trigger term when a specific margin is also stated. Thus, any reference to a specific index which is easily determinable and for which the margin is stated, is so closely akin to stating a rate that it will trigger the advertising disclosures.

Special rules apply to tiered-rate accounts: If a credit union states an annual percentage yield in an advertisement, it would have to state all of the annual percentage yields, including those required to be shown as a range, as well as the corresponding minimum balance requirements. (See appendix A for annual percentage yield calculations for tiered-rate accounts.) For example, assume that a credit union pays a stated dividend rate only on that portion of the balance within the following specified balance levels (that is, Tiering Method B described in appendix A), and compounds dividends daily:

Dividend rate (percent)	Deposit balance required to earn rate
5.25	$.01–<$2,500
5.50	$2,500–<$15,000
5.75	$15,000–$100,000

Computing the figures in accordance with appendix A, the credit union would have to state the following annual percentage yields:

Annual percentage yield	Balance required
5.39	$.01–<$2,500
5.39–5.61	$2,500–<$15,000
5.61–5.87	$15,000–$100,000

If a trigger term is stated, the advertisement must provide the disclosures listed in paragraph (c) in a clear and conspicuous manner.

Paragraph (c)(1)—*Variable Rates*

The regulation requires credit unions that advertise variable-rate accounts to state that the rate may change after the account is opened. Although TISA does not expressly require the statement, section 265(2) authorizes the FRB and NCUA to prescribe modifications for advertising rules relating to the annual percentage yield on variable-rate accounts. The FRB determined that a brief statement alerting the consumer to possible changes in the annual percentage yield is necessary in advertisements. Since most dividend-bearing accounts are variable-rate accounts by definition, comment was solicited on the need of this disclosure for credit unions, especially in light of the nature of dividends and paragraph (c)(5) of this section regarding conditions affecting account earnings. The FRB included the advertising disclosure in the final Reg DD. One commenter, a national trade association, requested that NCUA drop this advertising requirement, based on the reasons stated in the preamble to the proposed rule. No commenters supported retaining the disclosure. In light of the decision of the board to define variable-rate account as the FRB, and not to deem all share and share draft accounts variable-rate accounts, the Board believes that the FRB variable-rate advertising requirement should be included in the final rule in order to avoid member confusion and maintain substantial similarity to Regulation DD.

Paragraph (c)(2)—*Time Annual Percentage Yield Is Offered*

TISA requires, and the proposed regulation provided, that advertisements that state the annual percentage yield also state the period during which accounts with that annual percentage yield will be offered. Since credit unions cannot guarantee rates, comment was requested on how, or if, this requirement applies to credit unions. The proposed rule suggested, within the spirit of this TISA, that credit unions advertise anticipated rates or past rates. Two commenters specifically requested that this advertising disclosure be deleted for fear advertisement of "anticipated rates" would scare members. One commenter noted that California specifically allows dividends to be set in advance of a dividend period by a board of directors, though such dividends are only properly payable if such payment will not create or worsen a deficit in undivided profits. See Cal. Admin. Code tit. 10, ch. 3, subch. 3, section 927. Several other commenters noted the tradition of advertising anticipated dividend rates, and asked for the flexibility to give such rates.

In response, the Board decided that the following approach would be the fairest. For interest-bearing accounts, and for dividend-bearing term share accounts, either the period of time the annual percentage yield will be offered or a statement that the annual percentage yield is accurate as of a specific date, must be given. This approach is identical to the equivalent Regulation DD disclosure. (See related discussion under supplementary information for § 707.3(e).) If an advertisement does not indicate a date through which the credit union guarantees a specific rate, it must state that the rate is currently offered "as of" a specified recent date.

For dividend-bearing accounts other then term share accounts, a statement that the annual percentage yield is accurate as of the last dividend declaration date (a defined term, see § 707.2(j)) must be given. If the credit union so desires, a prospective annual percentage yield may be given, either in addition to or in lieu of the annual percentage yield as of the last dividend declaration date. For example, if a credit union only projects its rates for a week, due to a weekly dividend period, its advertisement might state "this annual percentage yield is expected from June 1 through June 8."

Paragraph (c)(3)—*Minimum Balance*

TISA requires that advertisements contain a statement of the applicable minimum account balance requirements to obtain the advertised annual percentage yields. Further, in the case of tiered-rate accounts, the regulation tracks the specific statutory requirement that each annual percentage yield and the associated minimum balance must be in close proximity and have equal prominence. The final rule follows TISA and is unchanged from the proposal.

Paragraph (c)(5)—*Effect of Fees*

TISA requires account advertisements to contain a statement that "fees or other conditions" could reduce the "yield" on the account. As in the proposed regulation, the final rule requires the statement but uses the term "earnings" rather than yield. TISA does not mandate terminology, and the Board believes that the term "earnings" more accurately conveys the impact of fees on the account, since in no event does the annual percentage yield take fees into account. The Board requires this statement if a credit union can impose any of the maintenance and activity fees discussed in § 707.8(a) (discussing "free" accounts). Thus, for example, the statement would appear on advertisements for dividend-bearing transaction accounts that impose a monthly service charge or a fee if a minimum balance is not maintained. However, if the only fees imposed on the account were fees other than a maintenance or activity fee (for example, a stop payment fee or a fee for a check returned for insufficient funds), the statement would not be required.

Comment was sought regarding whether this disclosure is repetitive of paragraphs (c)(1) and (c)(8) of this section, since they all concern the nature of the dividend declaration process, and whether consolidation of some or all of these paragraphs is in order due to the limitations upon which credit unions pay dividends. One commenter favored retention of this statement, with no comment on whether consolidation with other disclosures was preferable. No commenters specifically supported deletion, or consolidation, of the statement. However, many commenters supported simplification of disclosures. Given this, the Board decided to delete the proposed disclosure on the nature of dividends, proposed § 707.8(c)(8), but to leave the disclosures of variable-rate accounts, § 707.8(c)(1), and this disclosure. The Board believes that this decision, which is substantially similar to that of the final Regulation DD, best reflects Congressional intent.

Paragraph (c)(6)—*Features of Term Share Accounts*

Paragraph (c)(6)(i)—*Time Requirements*

This paragraph implements section 263(a)(3) of TISA. It requires that advertisements state any time requirement necessary to earn the advertised yield. The Board has limited this provision to term share accounts. If a credit union advertises a one-year term share account, it would state that time period. This section also requires advertisements to state any lower annual percentage yield that will be earned if funds are withdrawn prior to meeting the minimum time requirement. Once again, credit unions would be required to disclose a good faith dividend, and to declare that dividend at the maturity of the term share account if such an amount was properly payable.

Paragraph (c)(6)(ii)—*Early Withdrawal Penalties*

TISA requires that advertisements include a statement that a dividend penalty will be imposed for early withdrawal. The disclosure terminology is similar to that in TISA, but does not include the word "dividend." A disclosure may also be important for Regulation D purposes to qualify as a savings account (time deposit) with lower reserve requirements. 12 CFR 204.2(c)(1)(i). Additionally, due to recent changes in the FRB's Regulation D on transaction account reserve requirements (12 CFR part 204), penalties need no longer be "substantial"; therefore, this term was not used in the regulation. Similarly, the phrase "will or may" is used to cover both credit unions that impose early withdrawal penalties on a mandatory basis and those that impose such fees on a discretionary basis.

Paragraph (d)—*Bonuses*

Although TISA does not expressly require the bonus disclosures found in the final rule, the Board believes the additional information is consistent with TISA's purpose to provide uniform disclosures to assist in comparing accounts, particularly when "earnings" are being advertised. It should be kept in mind that these disclosures are triggered only if something worth over $10 per year is given to a member, as long as that something is not the waiver or reduction of a fee, absorption of expenses, nondividend membership benefits or extraordinary dividends. See the supplementary information to § 707.2(f) defining bonus.

The regulation treats bonuses as a trigger term. If a bonus is advertised, an explanation of the conditions that must be met for bonuses to be paid and when they will be paid also must be stated, along with the annual percentage yield and the items listed in paragraph (c) of this section. If minimum balance and other requirements for the bonus are the same as those otherwise required to be stated, the disclosures may be combined. If no dividends are paid on the account, no rate information need be stated in the advertisement.

Paragraph (f)—*Exemption for Certain Advertisements*

Certain media. Section 263(b) of TISA authorizes the FRB, if it finds the disclosures to be unnecessarily burdensome, to exempt "broadcast and electronic media and outdoor advertising" from stating any initial deposit requirement, or stating that fees or other conditions could reduce the return. The statute limits any relaxation of the advertising rules to these two disclosures. In Regulation DD, the FRB established a limited exemption from several of the advertising provisions for broadcast or electronic media, such as television or radio; outdoor media, such as billboards; telephone response machines; and lobby boards facing inside an institution or the offices of a share or deposit broker. The Board agrees with the FRB that the purposes of TISA would be frustrated if burdensome disclosure requirements caused credit unions to place fewer advertisements that members may use to comparison shop, especially in light of the inherent limitations of time or space in certain media. Therefore, the proposal follows Regulation DD in providing that advertisements made by use of these media will remain subject to the prohibition regarding misleading or inaccurate advertisements.

Rate information must be disclosed as an annual percentage yield. In addition, if an annual percentage yield is stated, these advertisements would need to state any minimum balance required to earn that yield. For term share accounts, the term would also need to be stated. Although space constraints may limit the likelihood that bonuses are mentioned, any advertisement in these media that states a bonus would trigger the disclosures required by this paragraph, as well as a statement regarding the conditions under which the bonus will be paid and the time it will be paid. Certain other disclosures required generally for advertisements (e.g., variable rates, minimum opening deposit) as set forth in that section are not required.

Lobby boards. In the case of lobby boards inside a depository institution or a deposit broker's office, Regulation DD first required that a notice appear on the board advising consumers that they can obtain further information about these accounts. For example, the statement could read "ask us for further information about these accounts," or words of similar import. The FRB provided that lobby boards placed primarily for viewing by the general public rather than members inside the institution or share or deposit broker's office are not exempt from the advertising provisions of this section, since consumers are less likely to receive details about the account from customer service representatives.

NCUA proposed an exception to some of the advertising requirements for lobby boards, based upon the FRB's final Reg DD. Congress then enacted the HDCA, which permits signs, including lobby boards, to be displayed on the premises of institutions if the sign contains the accompanying APY and a statement that the consumer should request further information from an employee of the institution concerning the fees and terms applicable to the advertised account. This provision applies only to signs viewable from the interior of the premises of the institution. The FRB amended their final Reg DD to exempt lobby signs (a term the FRB declined to define) "unless they face outside the premises and can reasonably be viewed by a customer only from outside the premises." Four commenters supported adopting the FRB amendment on lobby boards into the NCUA final rule. Thirty-eight commenters suggested deleting all requirements on advertising via lobby boards, since only credit union members can take advantage of credit union accounts, so the general public (which cannot open credit union accounts) could not be misled.

Though the Board found these arguments sound, it believes that it has no authority to override the lobby board amendment in the HDCA. Therefore, it has adopted the provision, as revised by the FRB in March of 1993.

The Board, like the FRB, believes that the Congress intended to permit abbreviated disclosures for signs inside a credit union's premises, unless the sign faces outside and can reasonably be viewed by a member only from outside the premises. The final rule provides a clear standard for determining what signs are eligible for the exception. The final rule exempts any signs inside the premises of a credit union (or the premises of a share or deposit broker) unless the sign faces outside and can reasonably be viewed by a member only from outside the premises. The Board believes that the standard captures the Congress' goal to require full disclosures for advertisements that are clearly designed to be viewed by persons not inside a credit union. The rule also avoids the uncertainty of compliance, when, for example, a sign behind a teller and facing customers at a small, glass-enclosed branch can also be seen by passersby. Such a sign would be an exempt indoor sign.

The final regulation does not define "lobby sign." Most FRB commenters stated that a definition was unnecessary. FRB commenters stated that depository institutions increasingly conduct business in retail malls or grocery stores where there is little or no "lobby" area; therefore, references to "lobby" in the final regulation have been deleted and instead the term "indoor sign" is used. The term "indoor sign" would apply to any sign inside the retail offices or branch of a credit union, whether a stand-alone location or contained in a federal building, sponsor's offices, retail mall or grocery store.

The regulation exempts indoor advertisements however they are displayed, such as banners, preprinted posters, and chalk or peg boards, whether affixed to a wall or displayed on one or both sides of an easel. Indoor advertisements on computer screens and electronic media are also exempt. Of course, an advertisement affixed to a window and facing outside remains subject to the general advertising rules, since it can reasonably be viewed only from outside the credit union. Any sign or notice inside the premises that can be retained by a member (such as a brochure or a print-out form from a computer) also is subject to the general advertising rules, as are signs on the exterior of a credit union.

The final rule retains for indoor signs the prohibition against misleading or inaccurate advertisements, and thus against the description of accounts as "free" if a maintenance or activity fee is imposed.

The HDCA amendment to § 263(c) of TISA states that the display of any rate on an indoor sign triggers the disclosure of the annual percentage yield. The statute does not require that the figure be described as "annual percentage yield." The regulation requires that in all cases, if a rate of return is advertised, it must be stated as the annual percentage yield using that term. The Board solicited comment on whether rates on a lobby sign should be identified as the annual percentage yield or by the abbreviation "APY." The vast majority of FRB commenters supported the proposal, primarily to promote uniformity and consistency in disclosures used by consumers in comparison shopping. The final rule provides that if a rate is displayed on an indoor sign, only the annual percentage yield, using that term or the abbreviation "APY," need be stated along with a statement that members should ask employees about fees and terms for the account.

Finally, the Board adopts the FRB position of exempting indoor signs from the disclosure requirements of § 707.8 (b), (c), (d) and (e)(1). Thus, any bonus displayed on an indoor sign that meets the test in § 707.8(e)(2)(i) would not trigger additional disclosures.

Newsletters. In the proposed rule, the Board requested comments on whether any advertising practices unique to credit unions (such as newsletters or election mailings), or limitations on dividend payments, would require changes to the definition of the term "advertisement" or special treatment. As discussed above in this supplementary information section, lobby boards, telephone response machines, broadcast and electronic media, and outdoor advertising are exempt from some advertising disclosure requirements.

The Board received 96 letters that addressed these issues. Most of the commenters favored some type of exemption for various communications that could be considered advertising. Following is a list of the communications discussed and the number of commenters who favored either a partial or full exemption from the advertising requirements for each: (1) Newsletters (91 commenters); (2) statement stuffers/messages (54 commenters); (3) sponsor publications (1 commenter); (4) mailings to existing accountholders (1 commenter); (5) promotions (1 commenter); (6) brochures (25 commenters); (7) election mailings (32 commenters); (8) internally prepared credit union items (1 commenter); (9) member communications (9 commenters); and (10) automated teller machine (ATM) receipts (1 commenter). Of these various items, only three are unique to credit unions—newsletters, sponsor publications and election mailings. Other financial institutions provide the other items to depositors, and, as the FRB did not provide an exemption for them, neither can the Board. The Board, as did the FRB, sympathizes with the cost and operational complexities of the final advertising rule, but is in little position to remedy Congressional requirements.

However, of the three items unique to credit unions, only newsletters provided to existing members alone seems worthy of a special exemption from the advertising rules. A sponsor organization is the organization often responsible for starting a credit union, and is also the organization providing the field of membership for the credit union. Ergo, sponsor publications are provided to potential members, as well as existing members. This contact with potential members raises the need for fuller disclosures on the part of those potential members. Therefore, the Board cannot provide an exemption for credit union advertisements in sponsor publications. Election mailings, which are provided to members whose credit unions provide for mail voting of volunteer officials, are provided only to notify members of candidates for offices of volunteer officials and as a reminder to vote. As information on share accounts seems extraneous to the provision of information regarding candidates for election, the Board declines to permit an exception for information included with the election mailings.

Newsletters provide a unique, and often necessary, means for credit unions to communicate with their membership. As a credit union is a cooperatively owned, limited membership, democratically operated, volunteer-managed entity, a private means of dialogue between the credit union and members is needed. Newsletters are a tradition of long-standing in credit unions. The Board finds that credit union newsletters are derived from the unique nature of credit unions.

If all advertising requirements were required of these newsletter communications to members, room to discuss policy changes in the credit union, new non-share account products and services, changes in address, stories on members, volunteers and staff, and other news items would be limited to make room for the requirements of § 707.8. Since the exemption provided by § 707.8(e)(3) is for newsletters sent to existing members of the credit union, who have already received the account opening disclosures on their credit union accounts, there is no compelling reason to repeat the information in each newsletter. Many credit unions send a newsletter to members each month. The repetition of the advertising requirements on the credit union's accounts month after month to the same members holding accounts seems unnecessary and useless to the Board. Moreover, the cost of such requirements for such little benefit would almost be tantamount to the wasting of corporate assets by a credit union.

Moreover, due to the fact that many credit unions often have few, if even more than one branch, the bulk of credit union business is conducted by telephone and mail. Since newsletters may provide the only means of written communication to their membership, full part 707 advertising disclosures on these unique means of communication would be cumbersome, burdensome, and detrimental to the credit union movement.

Therefore, the Board has adopted § 707.8(e)(3) in the final rule. Section 707.8(e)(3) is patterned after the exemption for lobby boards in § 707.8(e)(2). The newsletters must be sent to existing credit union members only. In order for the credit union to retain this partial exemption no potential members may receive copies of the newsletter. Any advertisements must comply with § 707.8(a) of the final rule, discussed in the supplementary information on § 707.8(a). If a rate of return on a covered account is stated in a newsletter, it must be stated as an "annual percentage yield," using that term or the term "APY." No other rate may be stated, except that the accompanying, related dividend rate may be stated. In addition, a statement advising members to contact an employee for further information about applicable fees and terms must be included. The Board strongly suggests that the credit union provide a telephone number for members to call somewhere in the newsletter.

The Board does not otherwise limit the application of this newsletter exemption to credit unions. Nor does the board deem it necessary to define the term "newsletter" for purposes of this rule. If further guidance is needed, the Board will address it through opinion letters or an official commentary in the future. Therefore, it applies to all credit union newsletters, whether instituted before or after the effective date of the final rule. Nor does the exemption require that all credit unions institute a newsletter to members. The partial exemption provided in § 707.8(e)(3) merely applies to any credit union distributing a newsletter regarding the credit union to existing members only. Nor does the partial exemption require newsletters of any particular frequency to members. Such newsletters may be sent with whatever frequency is determined and established by the credit union, whether it be weekly, monthly, quarterly, biannually or annually. Furthermore, insofar as means of distribution to members only is concerned, the Board envisions any means which is reasonably calculated to reach only existing members as complying with the requirements of § 707.8(e)(3). For instance, mailing newsletters to existing members is acceptable. Also, distribution of newsletters at a function limited to members, such as an annual meeting or member picnic, is acceptable. Leaving copies of the newsletter in a credit union branch in a place mostly frequented by members is also acceptable. Leaving copies of the newsletter in a sponsor's lunchroom, in a place frequented by a mixture of members and potential members (or even by members of the general public), or in a general mailing to members and potential members is not acceptable. Obviously, newsletters complying with all of the requirements of § 707.8 could be distributed to members, potential members, and nonmembers. The routes of distribution, and therefore the compliance necessitated by such distribution, are decisions left to each credit union.

Section 707.9—Enforcement and Record Retention

Paragraph (a)—*Administrative Enforcement*

Violations of the final regulation or TISA will be treated as a violation of the FCU Act, as required by section 270 of TISA. Violators will be subject to NCUA enforcement authority, which includes cease-and-desist orders, suspensions, removals, prohibitions, civil money penalties, or any other action available to the NCUA. Although a few commenters requested further clarification regarding enforcement actions, the regulation itself simply cites the administrative enforcement provisions of TISA. Actual use by NCUA of its enforcement authority in any particular case will depend upon such factors as the nature and severity of the violation, the degree of intent, and the ability to use other supervisory procedures.

Paragraph (b)—*Civil Liability*

This section is provided to notify credit unions of their potential civil liability to members for violations of the final regulation or TISA. Under section 271 of TISA, Credit unions may be civilly liable to their members for any actual damages sustained by a member as a result of a violation; punitive damages of between $100–$1,000 for a violation against an individual; and punitive damages of up to the lesser of $500,000 or 1% of the credit union's net worth, which NCUA would interpret as the credit union's reserves and undivided earnings, but not including member shares, for a violation against a class. TISA provides that credit unions will not be liable for undefined "bona fide" errors or for errors resulting in overpayments to members. One reason for the technicality of the regulation is to provide standards for many requirements not clearly delineated in TISA that could potentially lead to liability.

One commenter felt that the penalties were too harsh and should be softened. The penalties are prescribed by TISA, and the Board does not believe that it has authority to change them.

Paragraph (c)—*Record Retention*

The final rule, as did the proposal, requires credit unions to retain records regarding their compliance with their responsibilities under part 707 for a minimum of two years after disclosures are required to be made. Two years is the period commonly used in the FRB's other consumer regulations (for example, Regulations Z and E). Furthermore, given the frequency of examinations by the NCUA, a record retention requirement of this length should allow a credit union's examiners adequate review of pertinent documentation during periodic examinations. The majority of commenters who addressed this issue agreed with the two year record retention period.

Credit unions must keep evidence that disclosures were provided. They may meet this duty by demonstrating that they have established and maintained procedures for providing disclosures to every member entitled to the disclosures under the timing rules set forth in the regulation: in such cases they must retain sample disclosures for each account offered to members and potential members. Samples of change in terms notices would also need to be retained. Credit unions are not required to keep a copy of each disclosure provided to every member and potential member. The Board believes that evidence that a credit union has established procedures for providing disclosures, has followed them, and has retained sample disclosures will establish compliance with this section.

Credit unions need not retain a copy of each statement or periodic statement sent, as long as the specific information on each statement (such as the fees, dividends and annual percentage yield earned) can be retrieved. Sufficient rate and balance information must be retained to enable examiners to verify the dividends paid on an account. For periodic statements and other disclosures, the Board contemplates that records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information. The credit union need not retain disclosures in hard copy, as long as it retains enough information to reconstruct the required disclosures or other records. However, copies of all printed advertisements and the text of all advertisements conveyed by electronic or broadcast media should be retained. Logs of member requests for disclosures are not required, as long as procedures are maintained to ensure rule compliance.

Section 701.35—Share, Share Draft and Share Certificate Accounts

This revision is adopted as proposed. This section had been modified to include cross-references to part 707 and to part 740. The term "disclosures" was deleted to reflect the supersedure of the NCUA preemption in this area by TISA and part 707. The phrase "time for crediting of deposited funds" was deleted to reflect the supersedure of the NCUA preemption in this area by the EFAA and Regulation CC. NCUA sought comment regarding the interrelation of the preemption afforded by § 701.35 on share, share draft and share certificate accounts for FCUs to the narrower preemption permitted by TISA and proposed part 707. The Board adopted broad standards for part 707 preemption of state laws. See supplementary information regarding § 707.1(d). The Board believes that FCUs should be afforded the broadest possible protection in the area of share accounts, while still respecting the prerogatives of states in matters of local interest, and therefore will also continue to use a broad preemption standard for laws contrary to the final revision of § 701.35(c). The Board also will continue to abide by E.O. 12612 on Federalism and relevant case law in making any decisions in this area, and intends to issue no blanket preemptions of any state laws unless necessary.

Section 740.2—Accuracy of Advertising

This provision was adopted as proposed. The first sentence of this section has been modified to add a reference to § 707.8 on advertising. This was done to eliminate possible confusion created by an inconsistency between §§ 707.8 and 740.2. FCUs and FISCUs are subject to part 740 and the proposed advertising requirements of part 707, which is also mandatory for FCUs and FISCUs. This cross reference emphasizes that the truth in savings advertising provisions of part 707 are paramount.

Appendix A—Annual Percentage Yield Calculation

Appendix A establishes the rules that credit unions will use to calculate the annual percentage yield on all credit union accounts. These formulas apply to both dividend-bearing and interest-bearing accounts held by credit unions. The appendix contains two main parts: part I discusses the calculations for advertisements and account disclosures, and part II deals with annual percentage yield earned statement calculations. The Board is establishing only two annual percentage yield formulas in part I: A "general" formula that can be used for all types of accounts and a "simple" formula that can be used for those accounts that have a maturity of one year, or that have an unstated maturity. The appendix provides several examples to illustrate how these formulas work. The appendix explains the general rules and describes how they should be applied in more complicated accounts, such as stepped-rate and tiered-rate accounts. If an account has two types of features, such as variable- and tiered-rates, all applicable rules would have to be followed. Part II contains two formulas: A formula for calculating the annual percentage yield earned on statements, with no special rules for multiple rate accounts, and a special formula for use where a periodic statement is sent more often than the period for which dividends are compounded.

The appendix provides that the annual percentage yield shall reflect only dividends, and may not include the value of any bonuses. Factoring in the value of a bonus would add significant complexity to the calculation of the annual percentage yield. For example, the value would have to be established as well as when the merchandise is provided to the member. If a cash bonus is given, assumptions would have to be made about whether the bonus is deposited and whether dividends are accrued on the sum. The Board has chosen to follow the FRB in this regard.

The annual percentage yield calculation in part I also excludes any amounts that are determined by circumstances that may or may not occur. For example, a credit union may provide earnings to the member based on changes in certain stock market indicators (from the date an account is opened to the date it matures or is closed, for example) or on Consumer Price Index or U.S. Treasury Bills fluctuations. The annual percentage yield for these and similar types of accounts would exclude such potential earnings. Similarly, if a credit union chooses to pay .01% additional dividends for each point scored in a future sporting event, that potential would not be reflected in the annual percentage yield. No comments were received regarding whether credit unions offer these types of products. (To the extent the credit union paid such dividends on the account, the annual percentage yield earned on the account statement would capture these dividends.)

Comments received on appendix A mainly concerned the perceived difficulties in applying the appendix A formulas to rollback accounts. Since the Board has banned rollback accounts in the final rule, these comments are moot.

One commenter suggested disclosing the dividend rate alone without the APY. The Board believes this approach is also counter to TISA's purposes and chooses not to adopt the suggestion. In addition, seven commenters stated that the FRB appendix A formulas in Regulation DD needed no amendment in order to apply to dividend-bearing accounts. The Board agrees with these commenters and adopts most of appendix A as proposed, except where noted in this supplementary information.

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

A. General Rules

In general, the annual percentage yield reflects the relationship between the amount of dividends to be earned by the member for the term of the account (including any compounding of dividends) and the amount of principal assumed to have been placed in the account to earn that amount of dividends. Credit unions would be required to calculate the annual percentage yield based on the actual number of days in the term of the account. If an account has an unstated maturity, credit unions would calculate the annual percentage yield based on an assumed term of 365 days.

Some credit unions permit members to withdraw accrued dividends from term share accounts, for example, on a monthly basis. The Board believes that requiring different annual percentage yield calculations based on specific member decisions about whether to withdraw dividends or leave them in the account until maturity would significantly complicate compliance with the regulation. Thus, if members are permitted, but not required to withdraw accrued dividends from term share accounts, credit unions must calculate the annual percentage yield assuming the dividends are not withdrawn from the account. If accrued dividends must be withdrawn from an account that compounds dividends (that is, if a credit union does not permit a member to leave accrued dividends in the account) the annual percentage yield calculation must reflect such a requirement.

For term share accounts that are offered in multiples of months, the Board will permit credit unions to base the number of days on either the actual number of days during the applicable period, or the number that would occur for any actual sequence of that many calendar months. For example, if a credit union offers a six-month term share certificate account, the credit union could calculate the annual percentage yield based on the number of days in a particular six-month period, or in any six-month period. The Board believes this will minimize the need of credit unions to recalculate the annual percentage yield on an ongoing basis. The Board requires, however, that credit unions that choose to use this permissive rule would have to use the same number of days to calculate the dividends figure used in the annual percentage yield formula (where "Dividends" are divided by "Principal"). Thus, the credit union with the six-month term share certificate account above could base the annual percentage yield calculation on any number of days from 181 to 184, since various six-month periods could contain that range of days. If the credit union chooses to use 181 days as the "Days in Term," it must also use 181 days to compute the "Dividends" figure used in the formula. A credit union would not be permitted to use 181 as the "Days in Term" and use a "Dividends" figure based on 183 days. (The amount of dividends accrued (earned, posted but unpaid) or paid and credited by the credit union would have to be based on the actual number of days in the account due to the requirement to pay dividends on the principal in the account each day. See § 707.7 of the supplementary information.)

A section has been added to the appendix demonstrating that the APY is affected by the frequency of compounding. The amount of dividends will be greater the more frequently dividends are compounded for a given nominal rate. Examples have been added at the behest of commenters to illustrate the point.

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

For accounts with two or more dividend rates applied in succeeding periods (where the rates are known at the time the account is opened), a credit union shall assume each dividend rate is in effect for the length of time provided for in any share agreement. This rule would apply to all accounts, not only term share certificate accounts.

C. Variable-Rate Accounts

Variable-rate accounts with an introductory premium or discount rate must be treated like stepped-rate accounts. That is, the calculation of the annual percentage yield must reflect the introductory dividend rate for the length of time provided for in the share contract, and the variable dividend rate that (but for the introductory rate) would have been in effect when the account was opened or advertised for the remainder of the 365-day year.

FRB commenters asked for guidance on how to compute the annual percentage yield for an introductory premium or discount rate where the variable dividend rate "that would have been in effect" but for the premium or discount is not tied to an index, or is not otherwise known by the institution at the time the account is advertised or offered to a consumer.

The final rule addressed this situation. If, after the introductory rate ends, the succeeding variable rate will be tied to an index, the index-based rate in effect at the time the disclosure is made must be used for the remainder of the year. If the succeeding rate is not tied to a index, the rate currently in effect for existing members holding the same account who are not receiving the introductory dividend rate must be used as the assumed rate for the remainder of the year. If the succeeding rate is not tied to an index and the "introductory" rate is offered to both new and existing member account holders with the same account, the account is simply a variable-rate account and the stepped-rate rules would not apply.

D. Tiered-Rate Accounts (different rates apply to specified balance levels)

Due to the nature of tiered-rate accounts (in which the dividend rate paid on the account is determined by reference to specified balance levels), the Board believes special rules are required to enable members to compare annual percentage yields for such accounts.

The appendix sets out the two basic methods of tiering used by credit unions to calculate the dividends they will pay on such accounts.

Tiering Method A. In the first method (shown in the appendix as "Tiering Method A"), a credit union pays the applicable "tiered" dividends rate on the *entire amount* in the account. This is also known as a "hybrid" or "plateau" tiered-rate account. For accounts of this type, credit unions must state the annual percentage yield that applies to each balance tier. In the example given in the appendix, this results in three separate annual percentage yields to be disclosed—one for each tier. Other than the fact that multiple annual percentage yields must be stated for these types of accounts, each annual percentage yield is calculated according to the general rule in the appendix.

Tiering Method B. In the second method of calculating dividends on tiered-rate accounts (shown in the appendix as "Tiering Method B"), credit unions do 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 is also known as the "pure" or "split-rate" tiered-rate account. For credit unions that compute dividends in this manner, a *range* of annual percentage yields must be provided for each tier, other than for the first tier—to accurately reflect how dividends are paid. The low end of each range is figured on the lowest balance in the tier and the high end is figured on the highest balance in the tier. This approach requires an assumed balance for the highest tier in cases where the balance in the account is not limited. The FRB concluded that if an institution limited the maximum balance on an account, that figure should be used as the highest balance in the highest tier. Thus, if the maximum balance that can be on deposit in a tiered-rate account is $100,000, credit unions would use that number to figure the annual percentage yield for the high end of the tier. If the tiered account has no maximum balance, however, the credit union may assume any amount as the maximum balance figure of a tiered-rate account. The Board follows the FRB approach.

Part II. Annual Percentage Yield Earned for Statements

The annual percentage yield earned calculation for the statement is similar to that used for advertising and opening account disclosures. The annual percentage yield earned is transaction specific for the period over which dividends are earned. Thus, the annual percentage yield earned is an annualized rate that reflects the relationship between the amount of dividends earned (accrued or paid and credited) on the member's account during the statement or crediting period and the average balance in the account for the statement or crediting period. It factors in the actual number of days in the statement or crediting period, as well as the actual dividends and principal. It uses the same basic general formula as used in Part I, but reflects the actual dividends earned (accrued or paid and credited) and the average daily balance over the period for which the dividends were earned. See supplementary information concerning § 707.6(a), rule when statement and crediting periods vary.

A number of commenters raised the problems presented when the statement period does not coincide exactly with the dividend accrual period. Several commenters stated that they calculate dividends using a calendar month rather than the period covered by the statement cycle. This poses a particular problem when the average daily balance method is used. For example, a periodic statement might cover the period from June 16 through July 15, and reflect transactions that occurred during that period. The credit union, however, accrues dividends based on the average daily balance in the account during the month of June. The final rule provides that credit unions that use an average daily balance method and calculate dividends for a period other than the statement period must reflect on the statement (for the period during which the dividends calculation period ends) the dividends earned on the account during that other period (and not during the statement period). Furthermore, they must base the annual percentage yield earned on the balance information that corresponds to the dividends earned. For example, if a 3.50% dividend rate (with daily compounding) is paid on an average daily balance of $500 in June, dividends of $1.44 are earned in June. The annual percentage yield earned would be 3.56%, based on the average daily balance in the account during June ($500). If the periodic statement covers June 16 through July 15, the credit union would show the dividends earned and the annual percentage yield earned in June on that periodic statement.

Commenters also asked the Board to address the situation in which a monthly statement is issued, but dividends are calculated on a quarterly basis. For credit unions that use the daily balance method, the final regulation permits credit unions to calculate the annual percentage yield earned based on dividends earned for a monthly or alternative period. For instance, if a credit union calculates dividends on the average daily balance for the quarter, the average daily balance cannot be determined when statements are prepared for the first two months of the quarter. Therefore, no dividends earned or annual percentage yield earned would be disclosed on the first or second monthly statements. The dividends earned for the quarter would be shown on the statement for the third month and the annual percentage yield earned would be figured on the basis of the quarter. The third example in Part II of appendix A of this part shows this annual percentage yield earned calculation.

The Board chose the FRB's approach in adding a second APY Earned formula in Part II, i.e., a special formula for use where a periodic statement is sent more often than the period for which dividends are compounded. (See FRB Final Rule, 58 FR 15077.15079 (March 19, 1993.)) For credit unions that use the daily balance method to accrue dividends, if a periodic statement is sent more frequently than the period for which dividends are compounded, the annual percentage yield earned could be higher than the annual percentage yield provided in advertisements and opening account disclosures. This would be the case, for example, when a credit union uses the daily balance method of accruing dividends and compounds dividends annually, but provides monthly periodic statements. If a credit union pays a 5% dividend rate and compounds annually, it would disclose an annual percentage yield of 5.00% in its advertisements and initial account disclosures. However under the general annual percentage yield earned formula (See appendix A, Part II, A), the credit union would show $4.11 of dividends accrued on $1,000 of principal on a monthly periodic statement reflecting 30 days, and an annual percentage yield earned of 5.12% on that statement.

Without the additional formula, the concern is that members would be confused or misled by the use of an annual percentage yield earned figure that is higher than the initially disclosed annual percentage yield. The formula must be used when a credit union uses the daily balance method to accrue dividends and when a periodic statement is sent more often than the period for which dividends are compounded.

While the definitions that apply to the general formula in appendix A, Part II apply to the new formula as well, the Board has added a definition of "compounding" to the final rule. The final rule defines "compounding" as the number of days in each compounding period. For example, quarterly compounding is to be expressed as 91.25 days in the compounding period; semiannual compounding is to be expressed as 182.5; and annual compounding is to be expressed as 365.

The Board has added an example of the computation of an annual percentage yield earned that uses the special formula. Finally, the Board has rearranged the format of this section in appendix A of this part to reflect the adoption of the special formula.

The Board is aware that the FRB is considering a proposed amendment to Regulation DD which relates to the APY formula and certificates of deposit (CDs). The FRB has two concerns: (1) For a multi-year CD that does not compound interest, the formula provides an APY that is less than the interest rate; and (2) for CDs with maturities less than one year, the formula generates an APY that is greater than the interest rate—even if interest is not compounded. There are several proposed alternatives under consideration for addressing these implementation concerns. NCUA will monitor the FRB's resolution of these issues and consider further action at a later date. The Board is not inclined to delay this final rule pending FRB resolution of their amendment, nor does the Board choose to act outside, and without the benefit of, the FRB's deliberative process and resolution action.

Appendix B—Model Clauses and Sample Forms

Appendix B contains model clauses and sample forms intended for optional use by credit unions to aid in compliance with the disclosure requirements of §§ 707.4 (account disclosures), 707.5 (subsequent disclosures) and 707.8 (advertisements). Section 269(b) of TISA provides that credit unions that use these clauses will be in compliance with TISA's disclosure provisions.

As discussed in the supplementary information to § 707.3(a), both the proposed and final rules provide for flexibility in designing the format of the disclosures. Credit unions can choose to prepare a single document or brochure that incorporates disclosures for all accounts offered, or to prepare different documents for each type of account. Credit unions may also use inserts to a document, or fill in blanks to show current rates, fees, or other terms.

In the model clauses, words in parentheses indicate the type of disclosure a credit union should insert in the space provided (for example, a credit union might insert "March 23, 1995" in the blank for a "(date)" disclosure). Brackets and "/" indicate that a credit union must choose the alternative that best describes its practice (for example, "(daily balance/ average daily balance)").

The fifty-one comments received regarding appendix B were technical in nature. The majority of the comments concerned the model disclosures on the nature of dividends and rollback accounts. As the final rule bans rollback accounts, all references to rollbacks have been deleted from the final version of appendix B. The Board believes that the model disclosures on the nature of dividends are adequate as proposed, and has not revised those disclosures.

One commenter requested a simplification of the bonus disclosure. However, since the Board finds no uniqueness based reasons for varying the bonus disclosures, it declines to make such simplification. One commenter asked that fees be aggregated by type and not itemized. As discussed in the supplementary information to § 707.6(b)(3), this is not the approach adopted by either the Board or the FRB. Four commenters stated that the signature card/membership application of section B–4 of appendix B of this part should not be used as an account opening disclosure document. The commenters argued that the form could create liability problems for credit unions in that a copy of the form might not be given to members, as would be required if it were a disclosure document, and possible IRS Form 1099 issues with back-up withholding, and other membership rights issues. The Board understands these comments, but believes that the decision whether to use a signature card as a disclosure document is one to be made by each individual credit union, and not by the Board. For this reason, section B–4 is retained in the final appendix B to this part.

One commenter stated that appendix B was too confusing and complex to be used. The Board notes that most of the appendix B to part 707 is derived from appendix B to Regulation DD, which was studied and revised to put it into plain English. The Board, too, has made every attempt to use very basic language in appendix B, but has simplified language used wherever possible. One commenter requested a revision to the *Standard FCU Bylaws*. Such a request is beyond the scope of this rulemaking and under the Administrative Procedure Act the Board may not act on such matters at this time.

One commenter stated that the sample term share (certificate) form, in section B–5, did not include language regarding nontransferability and nonnegotiability. Contrary to the authority cited by the commenter, FRB's Regulation D on reserve requirements does not require such terms on time deposit accounts, such as term share accounts. 12 CFR 204.2(c)(2). Therefore, the Board leaves the addition of such terms to the board of directors of each credit union. This same commenter stated that the notes in appendix B to part 707 should not contain references to the *NCUA Accounting Manual for FCUs*. This commenter believed that such references were confusing, limited to FCUs in applicability, and did not refer to a source of law, but only to a source of guidance, and that the source documents were outmoded and poorly drafted. The commenter had similar statements on references to the *NCUA Standard FCU Bylaws* and the NCUA Rules and Regulations. As stated above, the Board provides these references for guidance only. In response to this comment, the Board has made it clear that such references are for guidance only in the instructional notes to appendix B.

The Board further notes that the terms suggested to be covered in item number 12 of sections B–6, B–7 and B–8, and item number 16 of section B–9, of appendix B, are recommendations only and not TISA requirements. However, the Board does strongly urge credit unions to investigate with local legal counsel or league counsel whether such terms should be included in disclosures. As is discussed in the supplementary information of § 707.3(b), the disclosures are to accurately reflect the legal relationship between member and credit union, and all terms disclosed must be accurate and not misleading. Similar arguments are noted by the commenter for the disclosure of bylaw information in item number 9 of sections B–6, B–7 and B–8, and item number 13 of section B–9 of appendix B. The Board replies in like fashion for bylaw disclosures as for contractual disclosures. The Board believes that the appendix B section notes, which act as instructions for the model clauses and sample forms, are more useful to credit unions if they are more comprehensive and thorough and provide adequate background to understand the language used and options available.

One commenter suggested that as NCUA was the drafter of these provisions, the Board should indemnify any credit union incurring liability as a result of the model clauses or sample forms in appendix B to part 707. The NCUA has carefully studied the model clauses and sample forms, which are mostly adopted from the appendix B to Regulation DD. The Board is sceptical that use of any of the language in appendix B, used correctly, could cause a credit union to incur liability. Inasmuch as the regulation provides that credit unions may use the forms promulgated by the Board as a safe harbor, the Board believes that it is unlikely that a court would find such usage unacceptable.

The Board has revised appendix B to clarify which of the model disclosures are derived from TISA and the regulation, and which come from other sources, such as the *NCUA Accounting Manual for FCUs* or the *Standard FCU Bylaws*. The Board has also made some other changes to appendix B, based upon substantive changes that were made to the final rule.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an economic analysis describing any significant economic impact a regulation may have on a significant number of small credit unions. For purposes of this analysis, credit unions under $2 million in assets will be considered small entities. As of December 31, 1992, there were 4,379 such entities, with a total of $3,587.6 million in assets (an average asset size of $0.8 million). These small entities make up 35 percent of all credit unions, but only one percent of all credit union assets.

This regulation is being promulgated because it is mandated by TISA. Furthermore, the NCUA Board has determined that the rule is necessary to implement TISA and Congressional intent that members/consumers should receive clear information about how dividends/interest are paid by various institutions so that they may make informed choices about where to place their funds.

Under the final rule, all credit unions will be required to disclose the exact terms and conditions of their accounts and dividend and interest calculation methods. These disclosures are to be made in writing to members or prospective members at the time of inquiry, and to existing members under three circumstances: (1) When they are considering opening an account or changing one; (2) when the credit union changes the terms of an existing account; and (3) when the member receives a "periodic statement" of account(s). "Periodic" is defined as at least quarterly. The periodic statement must include the annual percentage yield earned on all the funds in the account for the entire time that they remain there.

Many credit unions already distribute written disclosures. For small credit unions, these tend to be printed with imbedded blanks, so that volatile information such as rates can be written in by hand at the time the disclosure is given. The third circumstance is expected to be the most burdensome, because it will take some calculation expertise that may not be readily available in credit unions had in the past calculated and paid dividends based on the lowest balance during a period, whether on a rollback account or a pure low balance account.

NCUA conducted a survey of 337 credit unions statistically representative of all credit unions, and how they pay dividends, in order to understand and estimate the effects of the proposed rule. NCUA found that small credit unions are very likely to have no other kind of account besides "regular shares", in effect passbook or savings accounts, for which no periodic statement is necessary. In the sample survey, of the 100 small credit unions, only 4 percent have the second most common kind of account—share drafts (checking accounts)—compared to 54 percent of the larger credit unions, which offer that kind of account. The data suggest that smaller credit unions will have a minimal burden if their statements are issued less frequently than on a quarterly basis.

The Regulatory Flexibility Act lists three items that the final analysis must address. (*See,* 5 U.S.C. 604(a).) The first of these items ("a succinct statement of the need for, and the objectives of, the rule") is discussed in sections I, II and IV of this supplementary information. The second item ("a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues and a statement of any changes made in the proposed rule as a result of such comments") is discussed in the supplementary information on § 707.7(c), and below.

In its initial regulatory flexibility analysis, the Board solicited comments on how to establish a performance standard or otherwise ease the burden on small entities. The Board also asked (see section II of supplementary information to proposed rule, 57 FR 56686, 56687, November 30, 1992) how to reduce the regulation's burden on credit unions in general. The Board also requested comments on whether small credit unions should be given an exemption from the rule. In addition, the Board asked, in connection with § 707.7 of the proposed rule, how to handle small, noncomputerized credit unions that offer low balance accounts. See 57 FR 56705.

The comments clearly indicated that the regulation will impose a substantial financial burden on all credit unions, and especially on small entities. As a result of comments received, the Board has simplified and reduced the disclosures required under § 707.3(e) (oral responses to inquiries), § 707.4 (account disclosures), § 707.6 (statement disclosures), and § 707.8 (advertising disclosures). The Board has also made changes throughout the rule to accommodate current credit union practices. The specific changes and the reasons for each are discussed in the supplementary information to this final regulation. Also as a result of comments received, the Board attempted to find an alternative that would satisfy the requirements of TISA while reducing the burden on small credit unions. The Board's efforts in that area are discussed below.

The third item that the Board must include in its final regulatory flexibility analysis is "a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact on small entities which was considered by the agency, and a statement of the reason why each one of such alternatives was rejected." As noted above, the Board specifically sought comments on alternative treatment of small credit unions. Although some commenters thought that small credit unions should be subject to the same requirements as all others under the rule, a majority of commenters asked that small credit unions be given some type of exemption or that the burden on them be reduced in some way. The Board weighed various alternatives in an attempt to reduce the burden on small credit unions. The alternatives considered by the Board included exempting small credit unions from the entire regulation; exempting them from the requirement that periodic statements show the annual percentage yield earned; permitting small credit unions to continue offering rollback and/or low balance accounts; and delaying the regulation's effective date for small credit unions.

The Board ultimately decided against adopting any of these alternatives, because all of them are inconsistent with the purpose and explicit language of TISA. The Board does not believe that the statute's requirements and objectives can be met if some credit unions are exempted from the regulation (or portions thereof) or allowed to continue practices that the statute bans.

Paperwork Reduction Act

The Paperwork Reduction Act requires NCUA to obtain approval from the Office of Management and Budget for any new recordkeeping or reporting requirements. The Board is currently preparing this application, and will publish the required information for public comment in the **Federal Register** at a later date.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: Federal action limiting the policymaking discretion of the states should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope. The authority of the NCUA to regulate FISCUs and NICUs under TISA is clear. Furthermore, as Congress has found, the problems of inconsistent disclosures, consumer confusion and the inability of consumers to make meaningful comparisons among financial institutions, including credit unions, are problems of national scope. Moreover, TISA, as discussed in the supplementary information, requires that NCUA issue a regulation for all credit unions and includes specific language preempting inconsistent state laws.

With all of this in mind, the NCUA Board, pursuant to Executive Order 12612, has determined that this rule may have an occasional direct effect 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. Further, the rule may supersede provisions of state laws, regulations or approvals.

Since the rule might lead to conflicts between the NCUA and state credit union regulators on occasion, the Board requested comments on means and methods to eliminate, or at least limit, potential conflicts in this area. The Board specifically sought recommendations on the potential use of delegated authority, cooperative decisionmaking responsibilities, certification processes of federal standards, adoption of comparable programs by states requesting an exemption for their regulated credit unions, or other ways of meeting the intent of the Executive Order. The Board also requested comments from the state credit union regulators. No comments were received on the specific issues raised by this section of the supplementary information. Although the Board considered comments submitted on other issues, such as preemption, in making its assessment under Executive Order 12612, none of those comments offered a workable means of eliminating conflicts between the federal and state governments while carrying out the mandates of TISA. As discussed above, the Board's action is promulgating this final rule is required by Congress, and intended by Congress to address a problem of national scope. The regulation carries out a Congressional mandate. To the extent that the rule has adverse affects on state laws, those effects are the direct result of Congressional action. In the Board's opinion, the Congressional mandate and the need for the regulation outweigh the possible adverse effect on state powers. Therefore, the Board believes that the standards set forth in the Executive Order have been met.

By the National Credit Union Administration Board on September 9, 1993.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the Preamble, pursuant to authority granted in Section 272 of the Truth in Savings Act (12 U.S.C. 4311), the Board is adding a new regulation in 12 CFR part 707, and amending 12 CFR 701.35 and 12 CFR 740.2.

List of Subjects

12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 707

Advertising, Credit unions, Consumer protection, Interest, Interest rates, Truth in Savings

12 CFR Part 740

Advertising, Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.35 is amended by revising paragraph (c) to read as follows:

§ 701.35 Share, share draft and share certificate accounts.

* * * * *

(c) A Federal credit union may, consistent with this section, parts 707 and 740 of this subchapter, other federal law, and its contractual obligations, determine the types of fees or charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to federal credit unions.

* * * * *

3. Part 707 is added to read as follows:

PART 707—TRUTH IN SAVINGS

Sec.

Authority: 12 U.S.C. 4311.

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

(a) *Authority.* This part is issued by the National Credit Union Administration Board to implement the Truth in Savings Act of 1991 (TISA), contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4301 *et seq.*, Public Law No. 102–242, 105 Stat. 2236).

(b) *Purpose.* The purpose of this part is to enable credit union members and potential members to make informed decisions about accounts at credit unions. This part requires credit unions to provide disclosures so that members and potential members can make meaningful comparisons among credit unions and depository institutions.

(c) *Coverage.* This part applies to all credit unions whose accounts are either insured by, or eligible to be insured by, the National Credit Union Share Insurance Fund, except for any credit union that has been designated as a corporate credit union by the National Credit Union Administration. In addition, the advertising rules in § 707.8 apply to any person who advertises an account offered by a credit union, including any person who solicits any amount from any other person for placement in a credit union.

(d) *Effect on state laws.* State law requirements that are inconsistent with the requirements of the TISA and this part are preempted to the extent of the inconsistency.

§ 707.2 Definitions.

For purposes of this part, the following definitions apply:

(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. The term does not include an existing account held by an unincorporated nonbusiness association of natural persons prior to January 1, 1995, unless the association notifies the credit union that it meets the definition of "member" set forth in paragraph (q) of this section.

(b) *Advertisement* means a commercial message, appearing in any medium, that promotes directly or indirectly the availability of, or a deposit in, an account.

(c) *Annual percentage yield* means a percentage rate reflecting the total amount of dividends paid on an account, based on the dividend rate and the frequency of compounding for a 365-day period and calculated according to the rules in appendix A of this part.

(d) *Average daily balance method* means the application of a periodic rate to the average daily balance in the account for the 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* means the National Credit Union Administration Board.

(f) *Bonus* means a premium, gift, award, or other consideration worth more than $10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a member during a year in exchange for opening, maintaining, or renewing an account, or increasing an account balance. The term does not include dividends, 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, or extraordinary dividends.

(g) *Credit union* means a federal or state-chartered credit union that is either insured by, or is eligible to apply for insurance from, the National Credit Union Share Insurance Fund.

(h) *Daily balance method* means the application of a daily periodic rate to the full amount of principal in the account each day.

(i) *Dividend* and *dividends* mean any declared or prospective earnings on a member's shares in a credit union to be paid to a member or to the member's account. For purposes of this part, the term does 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, non-dividend membership benefits, or extraordinary dividends.

(j) *Dividend declaration date* means the date that the board of directors of a credit union declares a dividend for the preceding dividend period.

(k) *Dividend period* means the span of time established by the board of directors of a credit union by the end of which shares in a member account earn dividend credit. The dividend period may be different for each type of account.

(l) *Dividend rate* means the declared or prospective annual dividend rate paid on an account, which does not reflect compounding. For purposes of the account disclosures in § 707.4(b)(1)(i), the rate may, but need not, be referred to as the "annual percentage rate" in addition to being referred to as the "dividend rate."

(m) *Extraordinary dividends* means a nonrepetitive dividend paid at an irregular time from funds legally available for such distribution.

(n) *Fixed-rate account* means an account that is not a variable rate account as defined in paragraph (z) of this section.

(o) *Grace period* means a period following the maturity of an automatically renewing term share account during which the member may withdraw funds without being assessed a penalty.

(p) *Interest* means any payment to a member or to a member's account for the use of funds in a nondividend-bearing account at a state-chartered credit union offered pursuant to state law, calculated by application of a periodic rate to the balance. For purposes of this regulation, the term does 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, non-dividend membership benefits, or extraordinary dividends. Except as is specifically otherwise provided in this part, in the case of an interest-bearing account held in or offered by a state-chartered credit union pursuant to state law, the word "interest" shall be substituted for all references to "dividend" or "dividends" in this part.

(q) *Member* means:

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

(2) A natural person nonmember (or an unincorporated nonbusiness association of such persons) 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 also includes an unincorporated nonbusiness association of natural person members. The term does not include a natural person who holds an account for another in a professional capacity.

(r) *Nondividend membership benefits* means any property or service provided by a credit union to its members, the nature of which makes its valuation unreasonable and administratively impracticable.

(s) *Passbook account* means an account in which the member retains a book or other document in which the credit union records transactions on the account.

(t) *Periodic statement* means a statement setting forth information about an account (other than a term share account or passbook account) that is provided to a member on a regular basis four or more times a year.

(u) *Potential member* means a natural person within the credit union's field of membership (or an unincorporated nonbusiness association of such persons) or otherwise eligible to become a member as defined in paragraph (q) of this section.

(v) *State* means a state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(w) *Stepped-rate account* means an account that has two or more dividend rates that take effect in succeeding periods and are known when the account is opened.

(x) *Term share account* means any share certificate, interest-bearing certificate of deposit account, or other account with a maturity of at least seven days in which the member generally does not have a right to make withdrawals for six days after the account is opened, unless the account is subject to an early withdrawal penalty of at least seven days' dividends on amounts withdrawn, offered by a credit union to a member or potential member.

(y) *Tiered-rate account* means an account that has two or more dividend rates that are applicable to specified balance levels.

(z) *Variable-rate account* means a share, share draft, checking, or term share account in which the simple dividend rate may change after the account is opened, unless the credit union contracts to give at least thirty days advance written notice of rate decreases.

§ 707.3 General disclosure requirements.

(a) *Form.* Credit unions shall make the disclosures required by §§ 707.4 through 707.6, as applicable, clearly and conspicuously in writing and in a form that the member or potential member may keep. Disclosures for each account offered by a credit union may be presented separately or they 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 account.

(b) *General.* The disclosures shall reflect the terms of the legal obligation between the member and the credit union. Disclosures may be made in languages other than English, provided the disclosures are available in English upon request.

(c) *Relation to Regulation E (12 CFR part 205).* Disclosures required by and provided in accordance with the Electronic Fund Transfer Act (15 U.S.C. 1601) and its implementing Regulation E (12 CFR part 205) that are also required by this part may be substituted for the disclosures required by this part.

(d) *Multiple members.* If an account is held by more than one member, disclosures may be made to any one of the members.

(e) *Oral responses to inquiries.* In an oral response to a member or potential member's inquiry about dividend rates payable on its accounts, the credit union shall state the annual percentage yield. The dividend rate may be stated in addition to the annual percentage yield. No other rate may be stated. In stating a dividend rate and annual percentage yield, a credit union shall:

(1) For dividend-bearing accounts other than term share accounts, specify a dividend rate and annual percentage yield as of the last dividend declaration date. In the event that disclosures of a dividend rate and annual percentage yield as of the last dividend declaration date might be inaccurate because of known or contemplated dividend rate changes, the credit union may disclose the prospective dividend rate and prospective annual percentage yield. Such prospective dividend rate and prospective annual percentage yield may be disclosed either in lieu of, or in addition to, the dividend rate and annual percentage yield as of the last dividend declaration date.

(2) For interest-bearing accounts and for dividend-bearing term share accounts, specify an interest (dividend) rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and provide a telephone number members may call to obtain current rate information.

(f) *Rounding and accuracy rules for rates and yields*—(1) *Rounding.* The annual percentage yield, the annual percentage yield earned, and the dividend rate shall be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. For account disclosures, the dividend rate may be expressed to more than two decimal places.

(2) *Accuracy.* The annual percentage yield (and the annual percentage yield earned) will be considered accurate if not more than one-twentieth of one percentage point (.05%) above or below the annual percentage yield (and the annual percentage yield earned) determined in accordance with the rules in Appendix A of this part.

§707.4 Account disclosures.

(a) *Delivery of account disclosures*—(1) *Account opening.* The credit union shall provide the account disclosures to the member or potential member before an account is opened or a service is provided, whichever is earlier. A credit union is deemed to have provided a service when a fee required to be disclosed is assessed. If the member is not present at the credit union when the account is opened or a service is provided and has not already received the disclosures, the credit union shall mail or deliver the disclosures no later than twenty calendar days after the account is opened or the service is provided, whichever is earlier.

(2) *Requests.* (i) A credit union shall provide the account disclosures to any member or potential member upon request. A credit union may provide the account disclosures to nonmembers in its sole discretion. If the member is not present at the credit union when the request is made, the credit union shall mail or deliver the disclosures within a reasonable time after it receives the request.

(ii) In providing disclosures upon request, the credit union may:

(A) Specify rates as follows:

(*1*) For dividend-bearing accounts other than term share accounts, specify a dividend rate and annual percentage yield as of the last dividend declaration date. In the event that disclosures of a dividend rate and annual percentage yield as of the last dividend declaration date might be inaccurate because of known or contemplated dividend rate changes, the credit union may disclose the prospective dividend rate and prospective annual percentage yield. Such prospective dividend rate and prospective annual percentage yield may be disclosed either in lieu of, or in addition to, the dividend rate and annual percentage yield as of the last dividend declaration date.

(*2*) For interest bearing accounts and for dividend-bearing term share accounts, specify an interest rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and provide a telephone number members may call to obtain current rate information; and

(B) State the maturity of a term share account as either a term or a date.

(b) *Content of account disclosures.* Account disclosures shall include the following, as applicable:

(1) *Rate information.*—(i) *Annual percentage yield and dividend rate.* (A) For interest-bearing accounts and for dividend-bearing term share accounts, the "annual percentage yield" and the "interest rate" ("dividend rate"), using those terms, and for fixed-rate accounts the period of time the interest (dividend) rate will be in effect.

(B) For dividend-bearing accounts other than term share accounts, a credit union shall specify a dividend rate and annual percentage yield (using those terms) as of the last dividend declaration date. In the event that disclosures of a dividend rate and annual percentage yield as of the last dividend declaration date might be inaccurate because of known or contemplated dividend rate changes, the credit union may disclose the prospective dividend rate and prospective annual percentage yield. Such prospective dividend rate and prospective annual percentage yield may be disclosed either in lieu of, or in addition to, the dividend rate and annual percentage yield as of the last dividend declaration date.

(ii) *Variable rates.* For variable-rate accounts:

(A) The fact that the dividend rate and annual percentage yield may change;

(B) How the dividend rate is determined;

(C) The frequency with which the dividend rate may change; and

(D) Any limitation on the amount the dividend rate may change.

(2) *Compounding and crediting.*—(i) *Frequency.* The frequency with which dividends are compounded and credited, and the dividend period for dividend-bearing accounts.

(ii) *Effect of closing an account.* If members will forfeit dividends if they close an account before accrued dividends are credited, a statement that the dividends will not be paid in such cases.

(3) *Balance information.*—(i) *Minimum balance requirements.* Any minimum balance required to:

(A) Open the account;

(B) Avoid the imposition of a fee; or

(C) Obtain the annual percentage yield disclosed.

Except for the balance to open the account, the disclosure shall state how the balance is determined for these purposes.

(ii) *Balance computation method.* An explanation of the balance computation method specified in § 707.7, used to calculate dividends on the account.

(iii) *When dividends begin to accrue.* A statement of when dividends begin to accrue on noncash deposits.

(4) *Fees.* The amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed.

(5) *Transaction limitations.* Any limitations on the number or dollar amount of withdrawals or deposits.

(6) *Features of term share accounts.* For term share accounts:

(i) *Time requirements.* The maturity date.

(ii) *Early withdrawal penalties.* A statement that a penalty will be imposed for early withdrawal, how it is calculated, and the conditions for its assessment.

(iii) *Withdrawal of dividends prior to maturity.* If compounding occurs and dividends may be withdrawn prior to maturity, a statement that the annual percentage yield assumes dividends remain in the account until maturity and that a withdrawal will reduce earnings.

(iv) *Renewal policies.* A statement of whether or not the account will renew automatically at maturity. If it will, a statement of whether or not a grace period will be provided and, if so, the length of that period must be stated. If the account will not renew automatically, a statement of whether dividends will be paid after maturity if the member does not renew the account must be stated.

(7) *Bonuses.* The amount or type of any bonus, when the bonus will be provided, and any minimum balance and time requirements to obtain the bonus.

(8) *Nature of dividends.* For accounts earning dividends, other than term share accounts, a statement that dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

(c) *Notice to existing account holders*—(1) *Notice of availability of disclosures.* Credit unions shall provide a notice to members who receive periodic statements and who hold existing accounts of the type offered by the credit union on January 1, 1995. The notice shall be included on or with the first periodic statement sent after January 1, 1995 (or on or with the first periodic statement for a statement cycle beginning on or after that date). The notice shall state that the members may request account disclosures containing terms, fees, and rate information for the account. In responding to such a request, credit unions shall provide disclosures in accordance with paragraph (a)(2) of this section.

(2) *Alternative to notice.* As an alternative to the notice described in paragraph (c)(1) of this section, credit unions may provide account disclosures to members. The disclosures may be provided either with a periodic statement or separately, but must be sent no later than when the periodic statement described in paragraph (c)(1) of this section is sent.

§ 707.5 Subsequent disclosures.

(a) *Change in terms*—(1) *Advance notice required.* A credit union shall give advance notice to affected members of any change in a term required to be disclosed under § 707.4(b), if the change may reduce the annual percentage yield or adversely affect the member. The notice shall include the effective date of the change. The notice shall be mailed or delivered at least 30 calendar days before the effective date of the change.

(2) *No notice required.* No notice under this section is required for:

(i) *Variable-rate changes.* Changes in the dividend rate and corresponding changes in the annual percentage yield in variable-rate accounts.

(ii) *Share draft and check printing fees.* Changes in fees for check printing.

(iii) *Short-term term share accounts.* Changes in any term for term share accounts with maturities of one month or less.

(b) *Notice before maturity for term share accounts longer than one month that renew automatically.* For term share accounts with a maturity longer than one month that renew automatically at maturity, credit unions shall provide the disclosures described below before maturity. The disclosures shall be mailed or delivered at least 30 calendar days before maturity of the existing account. Alternatively, the disclosures may be mailed or delivered at least 20 calendar days before the end of the grace period on the existing account, provided a grace period of at least five calendar days is allowed.

(1) *Maturities of longer than one year.* If the maturity is longer than one year, the credit union shall provide account disclosures set forth in § 707.4(b) for the new account, along with the date the existing account matures. If the dividend rate and annual percentage yield that will be paid for the new account are unknown when disclosures are provided, the credit union shall state that those rates have not yet been determined, the date when they will be determined, and a telephone number members may call to obtain the dividend rate and the annual percentage yield that will be paid for the new account.

(2) *Maturities of one year or less but longer than one month.* If the maturity is one year or less but longer than one month, the credit union shall either:

(i) Provide disclosures as set forth in paragraph (b)(1) of this section; or

(ii) Disclose to the member:

(A) The date the existing account matures and the new maturity date if the account is renewed;

(B) The dividend rate and the annual percentage yield for the new account if they are known (or that those rates have not yet been determined, the date when they will be determined, and a telephone number the member may call to obtain the dividend rate and the annual percentage yield that will be paid for the new account); and

(C) Any difference in the terms of the new account as compared to the terms required to be disclosed under § 707.4(b) for the existing account.

(c) *Notice for term share accounts one month or less that renew automatically.* For term share accounts with a maturity one month or less that renew automatically at maturity, credit unions shall disclose any difference in the terms of the new account as compared to the terms required to be disclosed under § 707.4(b) for the existing account, other than a change in the dividend rate and corresponding change in the annual percentage yield. The notice shall be mailed or delivered within a reasonable time after the renewal.

(d) *Notice before maturity for term share accounts longer than one year that do not renew automatically.* For term share accounts with a maturity longer than one year that do not renew automatically at maturity, credit unions shall disclose to members the maturity date and whether dividends will be paid after maturity. The disclosures shall be mailed or delivered at least 10 calendar days before maturity of the existing account.

§ 707.6 Statement disclosures.

(a) *Rule when statement and crediting periods vary.* In making the disclosures described in paragraph (b) of this section, credit unions that calculate and credit dividends for a period other than the statement period, such as the dividend period, may calculate and disclose the annual percentage yield earned and amount of dividends earned based on that period rather than the statement period. The information in paragraph (b)(4) shall be stated for that period as well as for the statement period.

(b) *Statement disclosures.* If a credit union mails or delivers a periodic statement, the statement shall include the following disclosures:

(1) *Annual percentage yield earned.* The "annual percentage yield earned," using that term as calculated according to the rules in appendix A of this part.

(2) *Amount of dividends.* The dollar amount of dividends earned (accrued or paid and credited) on the account. The dollar amount of any extraordinary dividends earned during the statement period shall be shown as a separate figure.

(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 dollar amounts of the fees shall be itemized by type and dollar amounts.

(4) *Length of period.* The total number of days in the statement period, or the beginning and ending dates of the period.

§ 707.7 Payment of dividends.

(a) *Permissible methods*—(1) *Balance on which dividends are calculated.* Credit unions shall calculate dividends on the full amount of principal in an account for each day by use of either the daily balance method or the average daily balance method. Credit unions shall calculate dividends by use of a daily rate of at least 1/365 of the dividend rate. In a leap year a daily rate of 1/366 of the dividend rate may be used.

(2) *Determination of minimum balance to earn dividends.* A credit union shall use the same method to determine any minimum balance required to earn dividends as it uses to determine the balance on which dividends are calculated. A credit union may use an additional method that is unequivocally beneficial to the member.

(b) *Compounding and crediting policies.* This section does not require credit unions to compound or credit dividends at any particular frequency.

(c) *Date dividends begin to accrue.* Dividends shall begin to accrue not later than the day specified in section 606 of the Expedited Funds Availability Act (12 U.S.C. 4005) and implementing Regulation CC (12 CFR part 229). Dividends shall accrue on funds until the day funds are withdrawn.

§ 707.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement shall not be misleading or inaccurate and shall not misrepresent a credit union's account contract. An advertisement shall not refer to or describe an account as "free" or "no cost" (or contain a similar term) if any maintenance or activity fee may be imposed on the account. The word "profit" shall not be used in referring to interest paid on an account.

(b) *Permissible rates.* If an advertisement states a rate of return, it shall state the rate as an "annual percentage yield," using that term. (The abbreviation "APY" may be used provided the term "annual percentage yield" is stated at least once in the advertisement.) The advertisement shall not state any other rate, except that the "dividend rate," using that term, may be stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates.

(c) *When additional disclosures are required.* Except as provided in paragraph (e) of this section, if the annual percentage yield is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) *Variable rates.* For variable-rate accounts, a statement that the rate may change after the account is opened.

(2) *Time annual percentage yield is offered.* For interest-bearing accounts and dividend-bearing term share accounts, the period of time the annual percentage yield will be offered, or a statement that the annual percentage yield is accurate as of a specified date. For dividend-bearing accounts other than term share accounts, a statement that the annual percentage yield is accurate as of the last dividend declaration date. In the event that disclosure of an annual percentage yield as of the last dividend declaration date might be inaccurate because of known or contemplated dividend rate changes, the credit union may disclose the prospective annual percentage yield. Such prospective annual percentage yield may be disclosed either in lieu of, or in addition to, the dividend rate and annual percentage yield as of the last dividend declaration date.

(3) *Minimum balance.* The minimum balance required to earn the advertised annual percentage yield. For tiered-rate accounts, the minimum balance required for each tier shall be stated in close proximity and with equal prominence to the applicable annual percentage yield.

(4) *Minimum opening deposit.* The minimum deposit required to open the account, if it is greater than the minimum balance necessary to earn the advertised annual percentage yield.

(5) *Effect of fees.* A statement that fees or other conditions could reduce the earnings on the account.

(6) *Features of term share accounts.* For term share accounts:

(i) *Time requirements.* The term of the account.

(ii) *Early withdrawal penalties.* A statement that a penalty will or may be imposed for early withdrawal.

(d) *Bonuses.* Except as provided in paragraph (e) of this section, if a bonus is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) The "annual percentage yield," using that term;

(2) The time requirements to obtain the bonus;

(3) The minimum balance required to obtain the bonus;

(4) The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and

(5) When the bonus will be provided.

(e) *Exemption for certain advertisements*— (1) *Certain media.* If an advertisement is made through one of the following media, it need not contain the information in paragraphs (c)(1), (c)(2), (c)(4), (c)(5), (c)(6)(ii), (d)(4) and (d)(5) of this section:

(i) Broadcast or electronic media, such as television or radio;

(ii) Outdoor media, such as billboards; or

(iii) Telephone response machines.

(2) *Indoor signs.* (i) Signs inside the premises of a credit union (or the premises of a share or deposit broker) are not subject to paragraphs (b), (c), (d) or (e)(1) of this section unless they face outside the premises and can reasonably be viewed by a member only from outside the premises.

(ii) If a sign exempted by paragraph (e)(2) of this section states a rate of return, it shall:

(A) State the rate as an "annual percentage yield," using that term or the term "APY." The sign shall not state any other rate, except that the dividend rate may be stated in conjunction with the annual percentage yield to which it relates.

(B) Contain a statement advising members to contact an employee for further information about applicable fees and terms.

(3) *Newsletters.* (i) Newsletters sent by a credit union to existing members only are not subject to paragraphs (b), (c), (d) or (e)(1) of this section.

(ii) If a newsletter exempted by paragraph (e)(3) of this section states a rate of return, it shall:

(A) State the rate as an "annual percentage yield," using that term or the term "APY." The newsletter shall not state any other rate, except that the dividend rate may be stated in conjunction with the annual percentage yield to which it relates.

(B) Contain a statement advising members to contact an employee for further information about applicable fees and terms.

§ 707.9 Enforcement and record retention.

(a) *Administrative enforcement.* Section 270 of TISA (12 U.S.C. 4309) contains the provisions relating to administrative sanctions for failure to comply with the requirements of TISA and this part.

(b) *Civil liability.* Section 271 of TISA (12 U.S.C. 4310) contains the provisions relating to civil liability for failure to comply with the requirements of the TISA and this regulation.

(c) *Record retention.* A credit union shall retain evidence of compliance with this regulation for a minimum of two years after the date disclosures are required to be made or action is required to be taken.

Appendix A to Part 707—Annual Percentage Yield Calculation

The annual percentage yield (APY) measures the total amount of dividends a credit union pays on an account based on the dividend rate and the frequency of compounding. The annual percentage yield is expressed as an annualized rate, based on a 365-day year. (Credit unions may calculate the annual percentage yield based on a 365-day or a 366-day year in a leap year.) Part I of this appendix discusses the annual percentage yield calculations for account disclosures and advertisements, while Part II discusses annual percentage yield earned calculations for statements. The annual percentage yield reflects only dividends and does not include the value of any bonus, as that term is defined in part 707, that may be provided to the member to open, maintain, increase or renew an account. Dividends, interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future. These formulas apply to both dividend-bearing and interest-bearing accounts held by credit unions.

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

In general, the annual percentage yield for account disclosures under §§ 707.4 and 707.5 and for advertising under § 707.8 is an annualized rate that reflects the relationship between the amount of dividends that would be earned by the member for the term of the account and the amount of principal used to calculate those dividends. The amount of dividends that would be earned may be projected based on the most recent past declared rate or an anticipated future rate, whichever the credit union judges to most reasonably approximate the dividends to be earned. Special rules apply to accounts with tiered and stepped dividend rates.

A. General Rules

The annual percentage yield shall be calculated for all accounts by the formula shown below. Credit unions may calculate the annual percentage yield using projected dividends based on either the rate at the last dividend declaration date or the rate anticipated at a future date. The credit union must disclose whichever option it uses to members. Credit unions shall calculate the annual percentage yield based on the actual number of days for the term of the account. For accounts without a stated maturity date (such as a typical share or share draft account), the calculation shall be based on an assumed term of 365 days. In determining the total dividends figure to be used in the formula, credit unions shall assume that all principal and dividends remain on deposit for the entire term, and that no other transactions (deposits or withdrawals) occur during the term. (This assumption shall not be used if a credit union requires, as a condition of the account, that members withdraw dividends during the term. In such a case, the dividends (and annual percentage yield calculation) shall reflect that requirement.) For term share accounts that are offered in multiples of months, credit unions may base the number of days on either the actual number of days during the applicable period, or the number of days that would occur for any actual sequence of that many calendar months. If credit unions choose to use this permissive rule, they must use the same number of days to calculate the dollar amount of dividends that will be earned on the account in the annual percentage yield formula (where "Dividends" are divided by "Principal".)

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

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

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

"Dividends" is the total dollar amount of dividends earned on the Principal for the term of the account.

"Days in term" is the actual number of days in the term of the account.

When the "days in term" is 365 (that is, where the stated maturity is 365 days or where the account does not have a stated maturity), the APY can be calculated by use of the following simple formula:

APY=100 (Dividends/Principal).

Examples:

(1) If a credit union would pay $61.68 in dividends for a 365-day year on $1,000 deposited into a share draft account, the APY is 6.17%:

$APY=100\ [(1 + 61.68/1{,}000)^{(365/365)} - 1]$
APY=6.17%.

Or, using the simple formula above (since the term is deemed to be 365 days):

APY=100 (61.68/1,000)
APY=6.17%.

(2) If a credit union pays $30.37 in dividends on a $1,000 six-month term share certificate account (where the six-month period used by the credit union contains 182 days), using the general formula above, the APY is 6.18%:

$APY=100\ [(1+30.37/1{,}000)^{(365/182)} - 1]$
APY=6.18%.

The APY is affected by the frequency of compounding, i.e., the amount of dividends will be greater the more frequently dividends are compounded for a given nominal rate. When two credit unions are offering the same dividend rate on, for example, a share account, the APY disclosed may be different if the credit unions use a different frequency of compounding.

Examples:

(1) If a credit union pays $1,268.25 in dividends for a 365-day year on $10,000 deposited into a regular share account earning 12%, and the dividends are compounded monthly, the APY will be 12.68%.

APY=100 ($1,268.25/10,000)
APY=12.68%

(2) However, if a credit union is compounding dividends on a quarterly basis on an account which otherwise has the same terms, the dividends will be $1,255.09 and the APY will be 12.55%.

APY=100 ($1,255.09/10,000)
APY=12.55%

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

For accounts with two or more dividend rates applied in succeeding periods (where the rates are known at the time the account is opened), a credit union shall assume each dividend rate is in effect for the length of time provided for in any share agreement.

Examples:

(1) If a credit union offers a $1,000 6-month term share (certificate) account on which it pays a 5% dividend rate, compounded daily, for the first three months (which contain 91 days), and a 5.5% dividend rate, compounded daily, for the next three months (which contain 92 days), the total dividends for six months is $26.68, and, using the general formula above, the APY is 5.39%:

$APY=100\ [(1+26.68/1{,}000)^{(365/183)} - 1]$
APY=5.39%.

(2) If a credit union offers a $1,000 2-year share certificate on which it pays a 6% dividend rate, compounded daily, for the first year, and a 6.5% dividend rate, compounded daily, for the next year, the total dividends for two years is $133.13, and, using the general formula above, the APY is 6.45%:

$APY=100\ [(1+133.13/1{,}000)^{(365/730)} - 1]$
APY=6.45%.

C. Variable-Rate Accounts

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

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

For example, if a credit union offers an account on which it pays a 7% dividend rate, compounded daily, for the first three months (which, for example, contains 91 days), while the variable dividend rate that would have been in effect when the account was opened was 5%, the total dividends for a 365-day year for a $1,000 account balance is $56.52, (based on 91 days at 7% followed by 274 days at 5%). Using the simple formula, the APY is 5.65%:

APY=100 (56.52/1,000)
APY=5.65%.

D. Accounts with Tiered Rates (Different Rates Apply To Specified Balance Level)

For accounts in which two or more dividend rates paid on the account are applicable to specified balance levels, the credit union must calculate the annual percentage yield in accordance with the method described below that it uses to calculate dividends. In all cases, an annual percentage yield (or a range of annual percentage yields, if appropriate) must be disclosed for each balance tier.

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

Simple dividend rate (Percent)	Share balance required to earn rate
5.25	Up to but not exceeding $2,500.
5.50	Above $2,500, but not exceeding $15,000.
5.75	Above $15,000.

Tiering Method A

Under this method, a credit union pays on the full balance in the account the stated dividend rate that corresponds to the applicable share balance tier. For example, if a member deposits $8,000, the credit union pays the 5.50% dividend rate on the entire $8,000. This is also known as a "hybrid" or "plateau" tiered rate account.

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

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

First tier. Assuming daily compounding, the credit union will pay $53.90 in dividends on a $1,000 account balance. Using the general formula for the first tier, the APY is 5.39%

APY=100 $[(1+53.90/1,000)^{(365/365)}-1]$
APY=5.39%.

Using the simple formula:

APY=100 (53.90/1,000)
APY=5.39%.

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

APY=100 (452.29/8,000)
APY=5.65%.

Third tier. The credit union will pay $1,183.61 in dividends on a $20,000 account balance. Thus, using the simple formula, the annual percentage yield for the third tier is 5.92%:

APY=100 (1,183.61/20,000)
APY=5.92%.

Tiering Method B

Under this method, a credit union pays the stated dividend rate only on that portion of the balance within the specified tier. For example, if a member deposits $8,000, the credit union pays 5.25% on only $2,500 and 5.50% on $5,500 (the difference between $8,000 and the first tier cutoff of $2,500). This is also known as a "pure" tiered rate account.

The credit union that computes dividends in this manner must provide a range that shows the lowest and the highest annual percentage yields for each tier (other than for the first tier, which, like the tiers in Method A, has the same annual percentage yield throughout). The low figure for an annual percentage yield is calculated based on the total amount of dividends earned for a year assuming the *minimum* principal required to earn the dividend rate for that tier. The high figure for an annual percentage yield is based on the amount of dividends the credit union would pay on the *highest* principal that could be deposited to earn that same dividend rate. If the account does not have a limit on the amount that can be deposited, the credit union may assume any amount.

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

First tier. Assuming daily compounding, the credit union could pay $53.90 in dividends on a $1,000 account balance. For this first tier, using the simple formula, the annual percentage yield is 5.39%:

APY=100 (53.90/1,000)
APY=5.39%.

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

APY=100 (134.75/2,500)
APY=5.39%.

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

APY=100 (841.45/15,000)
APY=5.61%.

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

Third tier For the third tier, the credit union would pay $841.45 and $5,871.78 in dividends on the low end of the third tier (a balance of $15,000.01). For $15,000.01, dividends would be figured on $2,500 at 5.25% dividend rate, plus dividends on $12,500 at 5.50% dividend rate, plus dividends on $.01 at 5.75% dividend rate. For the low end of the third tier, therefore, the annual percentage yield, using the simple formula, is 5.61%:

APY=100 (841.45/15,000)
APY=5.61%.

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

APY=100 (5,871.78/100,000)
APY=5.87%.

Thus, the annual percentage yield that would be stated for the third tier is 5.61% to 5.87%. If the assumed maximum balance amount is $1,000,000, credit unions would use $985,000 rather than $85,000 in the last calculation. In that case for the high end of the third tier, the annual percentage yield, using the simple formula, is 5.91%:

APY=100 (59,134.22/1,000,000)
APY=5.91%

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

Part II. Annual Percentage Yield Earned for Statements

The annual percentage yield earned for statements under § 707.6 is an annualized rate that reflects the relationship between the amount of dividends actually earned (accrued or paid and credited) to the member's account during the period and the average daily balance in the account for the period over which the dividends were earned.

Pursuant to § 707.6(a), when dividends are paid less frequently than statements are sent, the APY Earned may reflect the number of days over which dividends were earned rather than the number of days in the statement period, e.g., if a credit union uses the average daily balance method and calculates dividends for a period other than the statement period, the annual percentage yield earned shall reflect the relationship between the amount of dividends earned and the average daily balance in the account for the other period, such as a crediting or dividend period.

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

A. General Formula

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

"Balance" is the average daily balance in the account for the period.

"Dividends earned" is the actual amount of dividends accrued or paid and credited to the account for the period.

"Days in period" is the actual number of days over which the dividends disclosed on the statement were earned.

Examples:

(1) If a credit union calculates dividends for the statement period (and uses either the daily balance or the average daily balance method), and the account had a balance of $1,500 for 15 days and a balance of $500 for the remaining 15 days of a 30-day statement period, the average daily balance for the period is $1,000. Assume that $5.25 in dividends was earned during the period. The annual percentage yield earned (using the formula above) is 6.58%:

APY Earned=100 $[(1+5.25/1,000)^{(365/30)}-1]$
APY Earned=6.58%.

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

APY Earned=100 $[(1+6.50/1,500)^{(365/30)}-1]$
APY Earned = 5.40%.

(3) Assume a credit union calculates dividends on the average daily balance for a quarter (for example, the calendar months of September through November), and provides monthly periodic statements covering calendar months. The account has a balance of $1,000 throughout the 30 days of September, a balance of $2,000 throughout the 31 days of October, and a balance of $3,000 throughout the 30 days of November. The average daily balance for the quarter is $2,000, which results in $21 in dividends earned for the quarter. The annual percentage yield earned would be shown on the periodic statement for November. The annual percentage yield earned (using the formula above) is 4.28%:

APY Earned=100 $[(1+21/2,000)^{(365/91)}-1]$
APY Earned=4.28%.

B. Special formula for use where periodic statement is sent more often than the period for which dividends are compounded.

Credit unions that use the daily balance method to accrue dividends and that issue periodic statements more often than the period for which dividends are compounded shall use the following special formula:

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

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

"Compounding" is the number of days in each compounding period.

Assume a credit union calculates dividends for the statement period using the daily balance method, pays a 5.00% dividend rate, compounded annually, and provides periodic statements for each monthly cycle. The account has a daily balance of $1000.00 for a 30-day statement period. The dividend earned of $4.11 for the period, and the annual percentage yield earned (using the special formula above) is 5.00%:

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

APY Earned = 5.00%.

Appendix B to Part 707—Model Clauses and Sample Forms

Table of Contents

General Note: Appendix B contains model clauses and sample forms intended for optional use by credit unions to aid in compliance with the disclosure requirements of §§ 707.4 (account disclosures), 707.5 (subsequent disclosures), 707.6 (statement disclosures), and 707.8 (advertisements). Section 269(b) of TISA provides that credit unions that use these clauses and forms will be in compliance with TISA's disclosure provisions.

As discussed in the supplementary information to § 707.3(a), this final rule provides for flexibility in designing the format of the disclosures. Credit unions can choose to prepare a single document or brochure that incorporates disclosures for all accounts offered, or to prepare different documents for each type of account. Credit unions may also use inserts to a document, or fill in blanks to show current rates, fees and other terms.

In the model clauses, words in parentheses indicate the type of disclosure a credit union should insert in the space provided (for example, a credit union might insert "July 23, 1995" in the blank for a "(date)" disclosure). Brackets and "/" indicate that a credit union must choose the alternative that best describes its practice (for example, "[daily balance/ average daily balance]"). It should be noted that only in sections B–6 through B–10 of this appendix have specific examples of disclosures been given, with dates and figures. Sections B–1 through B–5, and section B–11 provide only unspecific model clauses or blank forms. The Board felt, as did the FRB in the Appendix A to Regulation DD, that a mix of blank clauses and forms and application of the model clauses to real specific situations would benefit those who must comply with TISA.

Any references to NCUA Rules and Regulations, the *NCUA Standard FCU Bylaws*, or the *NCUA Accounting Manual for FCUs*, are provided for guidance and as a point of reference for credit unions. Citations to these sources does not indicate that their application is required for those credit unions who need not follow them.

B–1 Model Clauses for Account Disclosures (§ 707.4(b))

(a) *Rate Information (Sec. 707.4(b)(1))*

(i) *Fixed-Rate Accounts (§ 707.4(b)(1)(i)(A–B))*

1. *Interest-bearing Accounts*

The interest rate on your deposit account is _____% with an annual percentage yield (APY) of _____%. [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] You will be paid this rate [for (time period)/until (date)/ for at least 30 calendar days].

obtain current rate information.] You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days].

Note: This provision reflects an accurate statement for an interest-bearing account authorized by state law for state-chartered credit unions. While the definition of the term "interest" permits its substitution for the term "dividends," separate disclosures should be made for interest-bearing accounts. Since account opening disclosures may be provided to potential members requesting account information before opening an account, and members opening new accounts, information is provided indicating that the rate may not be current, but that the potential member or member may call the credit union to obtain up-to-date information. When opening a new account, of course, a credit union could provide the contractual rate alone, and delete the sentences in brackets. Given the definition of fixed-rate account in § 707.2(n), credit unions offering fixed-rate accounts must contract to hold rates steady for at least a 30-day period. Thus, if the 30-day option of the last sentence is not chosen, the period chosen must be longer than 30 days.

2. Dividend-bearing Term Share Accounts

The dividend rate on your term share account is ______% with an annual percentage yield (APY) of ______%. [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days].

Note: This provision reflects an accurate statement for a fixed-rate, dividend-bearing term share account. Interest-bearing term share accounts would use the disclosure in § 1, above. Since account opening disclosures may be provided to potential members requesting account information before opening an account, and members opening new accounts, information is provided indicating that the rate may not be current, but that the potential member or member may call the credit union to obtain up-to-date information. When opening a new account, of course, a credit union could provide the contractual rate alone, and delete the sentences in brackets. Given the definition of fixed-rate account in § 707.2(n), credit unions offering fixed-rate accounts must contract to hold rates steady for at least a 30-day period. Thus, if the 30-day option of the last sentence is not chosen, the period chosen must be longer than 30 days.

3. Other Dividend-bearing Accounts

[As of [the last dividend declaration date/(date)], the dividend rate was ______% with an annual percentage yield (APY) of ______% on your account. /or The prospective dividend rate on your account is ______% with a prospective APY of ______% for the current dividend period.] You will be paid this rate for [(time period)/at least 30 calendar days].

or

[As of [the last dividend declaration date/(date)], the dividend rate was ______% with an annual percentage yield (APY) of ______% on your account. /or The prospective dividend rate on your account is ______% with an annual percentage yield (APY) of ______% for this dividend period.] This rate will not change unless the credit union notifies you at least 30 calendar days prior to any change.

Note: Credit unions may disclose the dividend rate and annual percentage yield on accounts as of the last dividend declaration date. This necessitates inclusion of a disclosure of the actual calendar date of the last dividend declaration date. Additionally or alternatively (if the last dividend rate could be inaccurate), credit unions may disclose a prospective dividend rate and a prospective annual percentage yield. Such prospective rates and yields must be estimated in good faith, and must be declared at the proper time if it is at all possible to do so. As for the last sentence in these disclosures, this provision reflects a credit union policy to set prospective dividend rates for the next month (or at least 30 days), quarter or other period. Many credit unions, at their mid-monthly board meeting, set prospective dividend rates for the next month beginning on the 1st day of the month and continuing to the last day of the month. These rates must be formalized or ratified at the end of a dividend period. Given the timing of the board meetings, the time to prepare and mail notices and the 30 day period, it will often take credit unions 45 to 60 days to effectively change rates. For these reasons, the Board strongly suggests that credit unions do not offer fixed-rate, dividend-bearing accounts.

(ii) *Variable-Rate Accounts (§ 707 4(b)(1)(ii))*

1. Interest-bearing Accounts

The interest rate on your deposit account is ______%, with an annual percentage yield (APY) of ______%. [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] The interest rate and annual percentage yield may change every (time period) based on [(name of index)/the determination of the credit union board of directors]. The interest rate for your account will [never change by more than ______% each (time period)/never be less/more than ______%/never exceed ______% above or fall more than ______% below the initial interest rate].

Note: This disclosure combines the requirements of § 707.4(b)(1)(i) with § 707.4(b)(1)(ii) for interest-bearing accounts. The variable nature of a deposit account usually is based on an external index or is set at the discretion of the board. If another means of rate setting is used, that, instead of the proposed language, must be disclosed. Since account opening disclosures may be provided to potential members requesting account information before opening an account, and members opening new accounts, information is provided indicating that the rate may not be current, but that the potential member or member may call the credit union to obtain up-to-date information. When opening a new account, of course, a credit union could provide the contractual rate alone, and delete the sentences in brackets. Rarely would there be limitations on rate changes, but language is provided for this situation in the last sentence. Of course, it is only to be used if it applies to an account.

2. Dividend-bearing Term Share Accounts

The dividend rate on your term share account is ______%, with an annual percentage yield (APY) of ______%. [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] The dividend rate and annual percentage yield may change every (time period) based on [(name of index)/the determination of the credit union board of directors]. The dividend rate for your account will [never change by more than ______% each (time period)/never be less/more than ______%/never exceed ______% above or fall more than ______% below the initial dividend rate].

Note: This disclosure combines the requirements of § 707.4(b)(1)(i) with § 707.4(b)(1)(ii) for dividend-bearing, variable-rate term share accounts. The variable nature of a deposit account usually is based on an external index or is set at the discretion of the board. If another means of rate setting is used, that, instead of the model language, must be disclosed. Since account opening disclosures may be provided to potential members requesting account information before opening an account, and members opening new accounts, information is provided indicating that the rate may not be current, but that the potential member or member may call the credit union to obtain up-to-date information. When opening a new account, of course, a credit union could provide the contractual rate alone, and delete the sentences in brackets. Rarely would there be limitations on rate changes, but language is provided for this situation in the last sentence. Of course, it is only to be used if it applies to an account.

3. Other Dividend-bearing Accounts

[As of [the last dividend declaration date/(date)], the dividend rate was ______% with an annual percentage yield (APY) of ______% on your account. /or The prospective dividend rate on your account is ______% with an anticipated annual percentage yield (APY) of ______% for the current dividend period.] The dividend rate and annual percentage yield may change every (dividend period) as determined by the credit union board of directors.

Note: This language combines the requirements of § 707 4(b)(1)(i) with § 707 4(b)(1)(ii). Credit unions may disclose the dividend rate and annual percentage yield on accounts as of the last dividend declaration date. This necessitates inclusion of a disclosure of the actual calendar date of the last dividend declaration date or use of the phrase "last dividend declaration date" Additionally or alternatively, credit unions may disclose a prospective dividend rate and a prospective annual percentage yield. Such prospective rates and yields must be estimated in good faith, and must be declared at the proper time if it is at all possible to do so. As for the last sentence in these disclosures, this provision reflects the variable nature of the account. Generally, there is only one variable-rate feature for share accounts: the frequency of dividend period rate changes (e.g., daily, weekly, monthly, quarterly, semi-annually, annually). Normally, there are no contractual limitations on share account earnings (unless imposed by a regulator), nor are earnings based on any internal or external index. If contractual limitations or an index are involved, however, those factors would need to be disclosed (unless a regulator orders otherwise).

(iii) *Stepped-Rate Accounts (§ 707 4(b)(1)(i))*

1. Interest-bearing Accounts

The initial interest rate on your deposit account is ______% You will be paid that rate [for (time period)/ until (date)]. After that time, the interest rate for your deposit account will be ______% and you will be paid that rate [for (time period)/ until (date)]. The annual percentage yield (APY) for your account is ______% [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] You will be paid this rate [for (time period)/until (date)/ for at least 30 calendar days].

2 Dividend-bearing Term Share Accounts

The initial dividend rate on your term share account is ______%. You will be paid that rate [for (time period)/ until (date)]. After that time, the dividend rate for your term share account will be ______% and you will be paid that rate [for (time period)/ until (date)]. The annual percentage yield (APY) for your account is ______% [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days].

3 Other Dividend-bearing Accounts

[As of [the last dividend declaration date/ (date)], the initial dividend rate on your account was ______% /or The prospective dividend rate on your account is ______%.] You will be paid that rate [for (time period)/ until (date)]. After that time, the prospective dividend rate for your share account will be ______% and you will be paid such rate [for (time period)/ until (date)]. The annual percentage yield (APY) for your account is ______%. You will be paid this rate for [(time period)/at least 30 calendar days].

Note: Stepped-rate accounts are accounts with two or more rates that take effect in succeeding periods. The applicable rates and time periods *are known* when the account is opened. By nature these are fixed-rate accounts and are usually associated with term share (certificate) accounts. Accordingly, a contract provision (for share accounts) to change rates should be included.

(iv) *Tiered-Rate Accounts (§ 707 4(b)(1)(i))*

1 Interest-bearing Accounts

Tiering Method A

1* If your [daily balance/average daily balance] is $______or more, the interest rate paid on the entire balance in your account will be ______%, with an annual percentage yield (APY) of ______%.

2* If your [daily balance/average daily balance] is more than $______, but less than $______, the interest rate paid on the entire balance in your account will be ______%, with an APY of ______%.

3* If your [daily balance/average daily balance] is $______or less, the interest rate paid on the entire balance will be ______% with an APY of ______%.

[For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.]

[*Fixed-rate*—You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days]./ *Variable-rate*—The interest rate and APY may change every (time period) based on [(name of index)/ the determination of the credit union board of directors.]

Note: Tiering Method A pays the stated interest rate that corresponds to the applicable deposit tier on the full balance in the account. This example contemplates a two-tier system. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. For tiered-rate accounts, a disclosure may be added about the currency of the rate, as is provided in the first set of brackets. A disclosure regarding the fixed-rate or variable-rate nature of the account must be added, as is provided in the last set of brackets.

Tiering Method B

1* An interest rate of ________% will be paid only on the portion of your [daily balance/average daily balance] that is greater than $________. The annual percentage yield (APY) for this tier will range from ________% to ________%, depending on the balance in the account.

2* An interest rate of ________% will be paid only on the portion of your [daily balance/average daily balance] that is greater than $________, but less than $________. The annual percentage yield (APY) for this tier will range from ________% to ________%, depending on the balance in the account.

3* If your [daily balance/average daily balance] is $________or less, the interest rate paid on the entire balance will be ________%, with an annual percentage yield (APY) of ________%.

[For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.]

[*Fixed-rate*—You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days]./ *Variable-rate*—The interest rate and APY may change every (time period) based on [(name of index)/ the determination of the credit union board of directors.]

Note: Tiering Method B pays different stated interest rates corresponding to applicable deposit tiers, on the applicable balance in each tier of the account. For example, a credit union might pay 3% interest on account funds of $500 or below, and pay 4% interest on the portion of the same account that exceeds $500. The example contemplates an account with two tiers, but additional tiers are possible. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. For tiered-rate accounts, a disclosure may be added about the currency of the rate, as is provided in the first set of brackets.

Tiered-rate accounts can be either fixed-rate or variable-rate accounts. The last sentence offers an option of either fixed-rate or variable-rate disclosure. Thus, the disclosures outlined above will be made in addition to either: (i) Disclosure of the period the fixed-rates are in effect or (ii) the variable-rate disclosures. Tiered-rate accounts are also subject to the requirement for disclosure of the balance computation method, *see* paragraph (e) to this appendix.

2. Dividend-bearing Term Share Accounts

Tiering Method A

1* If your [daily balance/average daily balance] is $________or more, the dividend rate paid on the entire balance in your account will be ________%, with an annual percentage yield (APY) of ________%.

2* If your [daily balance/average daily balance] is more than $________, but less than $________, the dividend rate paid on the entire balance in your account will be ________%, with an APY of ________%

3* If your [daily balance/average daily balance] is $________or less, the dividend rate paid on the entire balance will be ________% with an APY of ________%.

[For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.]

[*Fixed-rate*—You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days]./ *Variable-rate*—The interest rate and APY may change every (time period) based on [(name of index)/ the determination of the credit union board of directors.]

Note: Tiering Method A pays the stated dividend rate that corresponds to the applicable account balance tier on the full balance in the account. This example contemplates a two-tier system. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. For tiered-rate accounts, a disclosure may be added about the currency of the rate, as is provided in the first set of brackets. A disclosure regarding the fixed-rate or variable-rate nature of the account must be added, as is provided in the last set of brackets.

Tiering Method B

1* A dividend rate of ________% will be paid only on the portion of your [daily balance/average daily balance] that is greater than $_______. The annual percentage yield (APY) for this tier will range from _______% to _______%, depending on the balance in the account.

2* A dividend rate of _______% will be paid only on the portion of your [daily balance/average daily balance] that is greater than $_______, but less than $_______. The annual percentage yield (APY) for this tier will range from _______% to _______%, depending on the balance in the account.

3* If your [daily balance/average daily balance] is $_______ or less, the dividend rate paid on the entire balance will be _______%, with an annual percentage yield (APY) of _______%.

[For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.]

[*Fixed-rate*—You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days]./ *Variable-rate*—The interest rate and APY may change every (time period) based on [(name of index)/ the determination of the credit union board of directors.]

Note: Tiering Method B pays different stated dividend rates corresponding to applicable account balance tiers, on the applicable balance in each tier of the account. For example, a credit union might pay 3% dividend on account funds of $500 or below, and pay 4% dividend on the portion of the same account that exceeds $500. The example contemplates an account with two tiers, but additional tiers are possible. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. For tiered-rate accounts, a disclosure may be added about the currentness of the rate, as is provided in the first set of brackets.

Tiered-rate accounts can be either fixed-rate or variable-rate accounts. The last sentence offers an option of either fixed-rate or variable-rate disclosure. Thus, the disclosures outlined above will be made in addition to either: (i) Disclosure of the period the fixed-rates are in effect or (ii) the variable-rate disclosures. Tiered-rate accounts are also subject to the requirement for disclosure of the balance computation method, *see* paragraph (e) to this appendix.

3. Other Dividend-bearing Accounts

Tiering Method A

1* [As of [the last dividend declaration date/ (date)], if your [daily balance/average daily balance] was $_______ or more, the dividend rate paid on the entire balance in your account was _______%, with an annual percentage yield (APY) of _______%. /or If your [daily balance/average daily balance] is $_______ or more, a prospective dividend rate of _______% will be paid on the entire balance in your account with a prospective annual percentage yield (APY) of _______% for this dividend period on your account.]

2* [As of [the last dividend declaration date/ (date)], if your [daily balance/average daily balance] was more than $_______, but was less than $_______, the dividend rate paid on the entire balance in your account was _______%, with an annual percentage yield (APY) of _______%. /or If your [daily balance/average daily balance] is more than $_______, but is less than $_______, a prospective dividend rate of _______% will be paid on the entire balance in your account with a prospective annual percentage yield (APY) of _______% for this dividend period on your account.]

3* [As of the last dividend declaration date/ (date)], if your [daily balance/average daily balance] was $_______ or less, the dividend rate paid on the entire balance was _______% with an annual percentage yield (APY) of _______%. /or If your [daily balance/average daily balance] is $_______ or less, a prospective dividend rate paid on the entire balance will be _______% with an annual percentage yield (APY) of _______% for this dividend period on your account.]

[*Fixed-rate*—You will be paid this rate for [(time period)/at least 30 calendar days]./ *Variable-rate*—The dividend rate and APY may change every (dividend period) as determined by the credit union board of directors.]

Note: Tiering Method A pays the stated dividend rate that corresponds to the applicable deposit tier on the full balance in the account. This example contemplates a two-tier system. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. For tiered-rate accounts, a disclosure may be added about the prospective rate. Note that the prospective rate disclosure options match the required tiered-rate disclosures based on the previous dividend declaration date. A disclosure regarding the fixed-rate or variable-rate nature of the account must be added, as is provided in the last set of brackets.

Tiering Method B

1* [As of [the last dividend declaration date/ (date)], a dividend rate of _______% was paid only on the portion of your [daily balance/average daily balance] that was greater than $_______. The annual percentage yield (APY) for this tier ranged from _______% to _______%, depending on the balance in the account. /or A prospective dividend rate of _______% will be paid only on the portion of your [daily balance/average daily balance] that is greater than $_______ with a prospective annual percentage yield (APY) ranging from _______% to _______%, depending on the balance in the account, for this dividend period.]

2* [As of [the last dividend declaration date/ (date)], a dividend rate of _______% was paid only on the portion of your [daily balance/average daily balance] that was greater than $_______ but less than $_______. The annual percentage yield (APY) for this tier ranged from _______% to _______%, depending on the balance in the account. /or A prospective dividend rate of _______% will be paid only on the portion of your [daily balance/average daily balance] that is greater than $_______, but less than $_______] with a prospective annual percentage yield (APY) ranging from _______% to _______%, depending on the balance in the account, for this dividend period.]

3* [As of [the last dividend declaration date/ (date)], if your [daily balance/average daily balance] was $_______ or less, the dividend rate paid on the entire balance was _______%, with an annual percentage yield (APY) of _______%. /or If your [daily balance/average daily balance] was $_______ or less, the prospective dividend rate paid on the entire balance will be _______% with a prospective annual percentage (APY) of _______% for this dividend period.]

Note: Tiering Method B pays different stated dividend rates corresponding to applicable account tiers, on the applicable balance in each tier of the account. For example, a credit union might pay a 3% dividend on account funds of $500 or below, and pay a 4% dividend on the portion of the same account that exceeds $500. The example contemplates an account with two tiers, but additional tiers are possible. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. Note that the prospective rate disclosure options match the required tiered-rate disclosures based on the previous dividend declaration date.

Tiered-rate accounts can be either fixed-rate or variable-rate accounts. The last sentence offers an option of either fixed-rate or variable-rate disclosures. Thus, the disclosures outlined above must be made in addition to either: (i) Disclosure of the period the fixed-rates are in effect or (ii) the variable-rate disclosures. Tiered-rate accounts are also subject to the requirement for disclosure of the balance computation method, see paragraph (e) to this appendix.

(b) *Nature of Dividends (§ 707 4(b)(8))*

Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

Note: The Board of Directors declares dividends based on current income and available earnings of the credit union after providing for the required reserves at the end of the month. The dividend rate and annual percentage yield shown may reflect either the last dividend declaration date on the account or the earnings the credit union anticipates having available for distribution. This disclosure only applies to share and share draft (as opposed to deposit) accounts and should be grouped with the Rate Information to make the disclosures more meaningful. This disclosure also does not apply to term share accounts for reasons discussed in the supplementary information regarding §§ 707.3(e) and 707 4(b)(8).

(c) *Compounding and Crediting (§ 707 4(b)(2))*

[Dividends/Interest] will be compounded (frequency) and will be credited (frequency).

and, if applicable:

If you close your [share/deposit] account before [dividends/interest] [are/is] paid, you will not receive the accrued [dividends/interest].

and, if applicable (for dividend-bearing accounts):

For this account type, the dividend period is (frequency), for example, the beginning date of the first dividend period of the calendar year is (date) and the ending date of such dividend period is (date). All other dividend periods follow this same pattern of dates. The dividend declaration date follows the ending date of a dividend period, and for the example is (date).

Note: Where the word "(frequency)" appears, time periods must be inserted to coincide with those specified in board resolutions of each credit union's board of directors. A disclosure of dividend period was added to § 707.4(b)(2)(i) in the final rule to assist members in knowing when dividend rate and APY disclosures would be given by a credit union using the optional statement rule of § 707.6(a). The dividend declaration date is important for purposes of § 707.4(a)(2)(ii), request disclosures, § 707.4(b)(2), account opening disclosures, and § 707.8(c)(2), advertising disclosures. The Board believes that this is critical information for dividend-bearing accounts, but that provision by an example (whether of the first dividend period of the year, or of any randomly chosen dividend period) is favorable to providing a list of such dates for the entire year or for a period of years (although these methods would also be permissible). As noted in the supplementary information to § 707.2(j), dividend declaration date, the dividend period and actual dividend distribution date may vary. Thus, it is possible for crediting periods and dividend periods not to coincide, though the Board believes that credit unions should make every effort to attempt to coordinate the two periods.

(d) *Minimum Balance Requirements (§ 707.4(b)(3)(i))*

(i) *To open the account*

The minimum balance required to open this account is $________.

or, for first share account at a credit union

The minimum required to open this account is the purchase of a (par value of a share) share in the credit union.

(ii) *To avoid imposition of fees*

You must maintain a minimum daily balance of $________in your account to avoid a service fee. If, during any (time period), your account balance falls below the required minimum daily balance, your account will be subject to a service fee of $________for that (time period).

or

You must maintain a minimum average daily balance of $________in your account to avoid a service fee. If, during any (time period), your average daily balance is below the required minimum, your account will be subject to a service fee of $________for that (time period).

(iii) *To obtain the annual percentage yield disclosed*

You must maintain a minimum daily balance of $________in your account each day to obtain the disclosed annual percentage yield.

or

You must maintain a minimum average daily balance of $________in your account to obtain the disclosed annual percentage yield.

(iv) *Absence of minimum balance requirements*

No minimum balance requirements apply to this account.

(v) *Par value*

The par value of a share in this credit union is $________.

Note: Where the words "(time period)" appear, time periods should be inserted to coincide with those specified in board resolutions of each credit union's board of directors. As the supplementary information to § 707.4(b)(3)(i) explains, the par value of a share to establish membership is a critical disclosure to be made to potential members of credit unions. The par value disclosure is required by § 707.4(b)(3)(i) as being analogous to a minimum balance account opening requirement.

(e) *Balance Computation Method (§ 707.4(b)(3)(ii))*

(i) *Daily Balance Method*

[Dividends/Interest] [are/is] calculated by the daily balance method which applies a daily periodic rate to the balance in the account each day.

(ii) *Average Daily Balance Method*

[Dividends/Interest] [are/is] calculated by the average daily balance method which applies a periodic rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the balance in the account for each day of the period and dividing that figure by the number of days in the period.

Note: Any explanation of balance computation method must contain enough information for members to grasp the means by which dividends or interest will be calculated on their accounts. Using a shorthand form, such as "day in/day out" for the daily balance method or "average balance" for the average daily balance method, without more information, is insufficient. In addition, any disclosure based on the equivalency of the two allowable methods, such as stating that the average daily balance method was the same as the daily balance method, is impermissible and misleading.

(f) *Accrual of Dividends/Interest on Noncash Deposits § 704.4(b)(3)(iii))*

[Dividends/Interest] will begin to accrue on the business day you [place/deposit] noncash items (e.g. checks) to your account.

or

[Dividends/Interest] will begin to accrue no later than the business day we receive provisional credit for the [placement/deposit] of noncash items (e.g. checks) to your account.

Note: Accrual information is not included in the explanation of balance computation method required by § 707.4(b)(4)(ii). In addition, the disclosures required by TISA do not affect the substantive requirements of the EFAA and Regulation CC.

The EFAA and Regulation CC control, and any modifications to them should occasion credit unions to revisit this disclosure with a view to revising it to reflect current law.

(g) *Fees and Charges (§ 707.4(b)(4))*

The following fees and charges may be assessed against your account:

(Service/explanation)—$______.

(Service/explanation)—$______.

Note: Fees and charges may be disclosed in an account disclosure, or separately in a Rate and Fee Schedule (see section B–11 of this appendix). In either event, the disclosure should also specify when the fee will be assessed by using phrases such as "per item," "per month," or "per inquiry."

(h) *Transaction Limitations (§ 707.4(b)(5))*

The minimum amount you may [withdraw/write a draft for] is $________

During any statement period, you may not make more than six withdrawals or transfers to another credit union account of yours or to a third party by means of a preauthorized or automatic transfer or telephonic order or instruction. No more than three of the six transfers may be made by check, draft, debit card, if applicable, or similar order to a third party. If you exceed the transfer limitations set forth above in any statement period, your account will be subject to [closure by the credit union/a fee of $________.

Note: This paragraph satisfies the requirements of § 707.4(b)(6) with respect to Regulation D limitations on share accounts and money market accounts. These are some of the more common limitations applicable.

The credit union reserves the right to require a member intending to make a withdrawal from any account (except a share draft account) to give written notice of such intent not less than seven days and up to 60 days before such withdrawal.

Note: This disclosure is limited to federal credit unions with Bylaws containing this limitation. See *Standard Federal Credit Union Bylaws*, Art. III, section 5(a). Similar disclosures are required of any state-chartered credit unions having similar limitations in their bylaws, or under state law. This limitation does not directly relate to the "number" or "amount" of transactions, and accordingly, may not be necessary under § 707.4(b)(5), but would, if applicable, be required by § 707.3(b).

(i) *Disclosures Related to Term Share Accounts (§ 707.4(b)(6))*

(i) *Time requirements*

Your account will mature on (date).

or

Your account will mature after (time period).

(ii) *Early withdrawal penalties*

We [will/may] impose a penalty if you withdraw [any/all] of the [funds/principal] in your account before the maturity date. The penalty will equal [________[days'/weeks'/months'] [dividends/interest] on your account.

or

We [will/may] impose a penalty of $________if you withdraw [any/all] of the [funds/principal] before the maturity date.

If you withdraw some of your funds before maturity, the [dividend/interest] rate for the remaining funds in your account will be ______%, with an annual percentage yield of ______%.

Note: In most cases, the dividend rate and annual percentage yield on the funds remaining in the account after early withdrawal are the same as before the withdrawal. Accordingly, the disclosure of dividend rate and annual percentage yield after withdrawal is required only if the dividend rate and APY will change.

(iii) *Withdrawal of Dividends/Interest Prior to Maturity*

The annual percentage yield is based on an assumption that [dividends/interest] will remain in the account until maturity. A withdrawal will reduce earnings.

Note: This disclosure may be used if the credit union compounds dividends/interest and allows withdrawal of accrued dividends/interest before maturity. This disclosure alerts members that the annual percentage yield is based on an assumption that the dividends/interest remain on deposit until maturity.

(iv) *Renewal Policies*

1. *Automatically Renewable Term Share Accounts*

Your term share account will automatically renew at maturity. You will have a grace period of ________[calendar/business] days after the maturity date to withdraw the funds in the account without being charged an early withdrawal penalty.

or

Your term share account will automatically renew at maturity. There is no grace period following the maturity of this account.

2. *Non-Automatically Renewable Term Share Accounts*

This account will not renew automatically at maturity. If you do not renew the account, your account will [continue to earn/no longer earn] [dividends/interest] after the maturity date.

Note: These disclosures should agree with the necessary pre-maturity notices for term share accounts in B-3 of this appendix.

(j) *Bonuses (§ 704.4(b)(7))*

You will [be paid/receive] [$__________/ (description of item)] as a bonus [when you open the account/on (date)].

You must maintain a minimum [daily balance/average daily balance] of $_________to obtain the bonus.

To earn the bonus, [$__________/your entire principal] must remain on deposit [for (time period)/until (date)].

Note: These disclosures follow the requirements of § 707.4(b)(7) and should be used as applicable. Further information may also be added, especially if it clarifies the conditions and timing of receiving the bonus, or better informs the member about the bonus.

B-2 Model Clauses for Changes in Terms (§ 707.5(a))

On (date), the (type of fee) will increase to $_________.

On (date), the [dividend/interest] rate on your account will decrease to ______%, with an annual percentage yield (APY) of ______%.

On (date), the [minimum daily balance/ average daily balance] required to avoid imposition of a fee will increase to $________

Note: These examples apply to the more common changes necessitating a change in terms notice. However, any change, amendment or modification reducing the APY or adversely affecting the members holding such accounts must be disclosed. For such changes not contemplated by the model clauses, the Board recommends the use of as simple language as possible to convey the change, along with cross-referencing to the particular sections or paragraph numbers of the account opening disclosures, when to do so

will assist members in reviewing and understanding the change.

B-3 Model Clauses for Pre-Maturity Notices for Term Share Accounts (§ 707.5(b–d))

(a) *Maturity Date*

Your term share account will mature on __________.

(b) *Nonrenewal*

Unless your term share account is renewed, it will not accrue further [dividends/interest] after the maturity date.

(c) *Rate Information*

The [dividend/interest] rate and annual percentage yield that will apply to your term share account if it is renewed have not yet been determined. That information will be available on ________. After that date, you may call the credit union during regular business hours at (telephone number) to find out the [dividend/interest] rate and annual percentage yield (APY) that will apply to your term share account if it is renewed.

Note: Pre-maturity notices should follow the requirements of § 707.5(b–d) as closely as possible. Care should be taken to explain any grace periods used. See discussion of use of alternative timing in supplementary information to § 707.2(o) and § 707.5(b–d).

B-4 Sample Form (Signature Card/ Application for Membership)

Application for Membership/Account Signature Card

ACCOUNT NUMBER ________

__________ __________ __________
(last name) (first name) (middle name)

____
(street address) (apartment number)

__________ ______ ________
(city) (state) (zip code)

____________ ____________
(home telephone number) (business telephone number)

___-___-_______ __________
(Social Security # or TIN) (date of birth)

____________ ____________
(mother's maiden name) (employer, occupation)

I hereby make application for membership in and agree to conform to the Bylaws, as amended, of _________Credit Union (the "Credit Union"). I certify that: I am within the field of membership of this Credit Union; the information provided on this application is true and correct; and my signature on this card applies to all accounts under my name at this Credit Union. I also agree to be bound to the terms and conditions of any account that I have in the Credit Union now or in the future.

____
(signature of applicant)

This application approved________(date) by the (Check one)

( ) Board ( ) Exec. Committee

( ) Membership Officer

Signed: ______________________________

(Secretary; Exec. Cmte. Member, or Membership Officer)

Note: This form is modeled on NCUA Form FCU 150, Application for Membership, as discussed in the *Accounting Manual for FCUs*, §§ 5030.1, 5150.3. It is noted that other information can also be requested on the signature card, as long as it is in accordance with federal and state laws. For example, information identifying the member, such as a state driver's license number, could be added. The types of accounts that the signature applies to could be specified. Furthermore, the Board notes that this card contains much identification information that may not be necessary for all credit unions; common sense should guide credit union boards of directors in designing their applications for membership/signature cards However, the Board believes that the information solicited on this form is reasonable and prudent for many credit unions. Payable on death designations, joint account language required under state law, life savings beneficiary designations, and other like variations and designations may be added to the card if so desired. The proposed signature card/ application for membership form contained taxpayer certification language. One commenter noted that the IRS may always change its requirements in this area, which are beyond the authority of the Board. Therefore, the Board has deleted reference to the IRS taxpayer certification required by 26 USC 3406, but notes that such certification must be made in accordance with applicable law and IRS rules. The information may be included on the front and back of a standard size signature card, or on the front of a large size signature card. However, no account terms may be included on a signature card unless a copy of the signature card is provided to the member at the time of account opening. The Board recommends that credit unions refrain from this practice, and instead use standard account disclosures. One reason for this is that if laws, regulations or credit union policies change, discrepancies may result between them and the earlier signature card terms. Given the longevity of credit union membership, signature cards may well be in use for up to or over a century. In addition, as signature cards are relatively small, they probably will not contain enough space to make all desired and required disclosures. Fragmentation of terms, some on signature cards, some on separate disclosures, could easily lead to member confusion. As terms are usually construed against the drafter, credit unions should be very careful in their use of account terms and conditions varying from those provided as model clauses and sample forms in this appendix.

B–5 Sample Form (Term Share (Certificate) Account)

Term Share Certificate

____

Date Issued

____

Account Number

____

Certificate Number

____

Social Security Number

This is to certify that (name(s)) ____________ [is/ are] the owner(s) of a term share certificate account in the ________ Credit Union (the "Credit Union") in the amount of ________ Dollars ($________). This term share certificate account may be redeemed on (maturity date) ________ only upon presentation of the certificate to the Credit Union. The dividend rate of this certificate account is ___% with an annual percentage yield of ___%. The annual percentage yield and dividend rate assume that dividends are to be [check one] ( ) added to principal/( ) paid to regular share account number ________/ ( ) mailed to owner(s). This account is subject to all terms and conditions stated in the Term Share Certificate Account Disclosures, as they may be amended from time to time, and incorporates the same by reference into this agreement.

____

Authorized signature

____

Authorized signature

Note: This form is modeled on NCUA Form FCU 107SCP, Credit Union Share Certificate, as discussed in the *Accounting Manual for FCUs*, §§ 5030.1, 5150.6. It is simplified to reflect the term share (certificate) account agreement, the parties involved, the maturity term and the annual percentage yield and dividend rate. All other terms are incorporated by reference. This should allow the credit union maximum flexibility in fashioning certificate, and other term share account, products. If a credit union so desired, other terms and conditions could be incorporated into the term share certificate itself, as long as a copy is presented to the member at the account opening. Care should also be taken to ensure that the term share certificate format addresses any necessary state law concerns. As the FRB's Regulation D on reserve requirements permits all term share accounts to be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, statement or otherwise, and still be considered a "time deposit", the Board has made no entry on this sample form regarding such terms, leaving the decision instead to each credit union's board of directors. 12 CFR 202.4(c)(2).

B–6 Sample Form (Regular Share Account Disclosures)

Regular Share Account Disclosures

1. *Rate information.* As of April 1, 1995, the dividend rate was 5.00% and the annual percentage yield (APY) was 5.13% on your regular share account. In addition, the credit union estimates a prospective dividend rate of 5.25% and a prospective APY of 5.39% on your share account for this dividend period on your share account.

2. *Compounding and crediting.* Dividends will be compounded daily and will be credited quarterly. For this account type, the dividend period is quarterly, for example, the beginning date of the first dividend period of the calendar year is January 1 and the ending date of such dividend period is March 31. All other dividend periods follow this same pattern of dates. The dividend declaration date follows the ending date of a dividend period, and for the example is April 1. If you close your regular share account before dividends are credited, you will not receive accrued dividends.

3. *Minimum balance requirements.* The minimum balance to open this account is the purchase of a $5 share in the Credit Union. You must maintain a minimum daily balance of $500 in your account to avoid a service fee. If, during any day during a quarter, your account balance falls below the required minimum daily balance, your account will be subject to a service fee of $5 for that quarter.

4. *Balance computation method.* Dividends are calculated by the daily balance method which applies a daily periodic rate to the principal in your account each day.

5. *Accrual of dividends.* Dividends will begin to accrue on the business day you deposit noncash items (e.g., checks) to your account.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies—$5.00 per statement.

b. Account inquiries—$3.00 per inquiry.

c. Dormant account fee—$10.00 per month.

d. Wire transfers—$8.00 per transfer.

e. Minimum balance violation—$5.00 per day.

f. Share transfer—$1.00 per transfer.

g. Excessive share withdrawals $1.00 per item.

7. *Transaction limitations.* During any statement period, you may not make more than six withdrawals or transfers to another credit union account of yours or to a third party by means of a preauthorized or automatic transfer or telephonic order or instruction. No more than three of the six transfers may be made by check, draft, debit card, if applicable, or similar order to a third party. If you exceed the transfer limitations set forth above in any statement period, your account will be subject to closure by the credit union or to a fee of $1.00 per item.

8. *Nature of dividends.* Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

9. *Bylaw Requirements.* A member who fails to complete payment of one share within ________ of his admission to membership, or within ________ from the increase in the par value in shares, or a member who reduces his share balance below the par value of one share and does not increase the balance to at least the par value of one share within ________ of the reduction may be terminated from membership at the end of a dividend period. [All blanks should be filled with time chosen by credit union board of directors, but must be at least 6 months.] Shares may be transferred only from one member to another, by written instrument in such form as the Credit Union may prescribe. The Credit Union reserves the right, at any time, to require members to give, in writing, not more than 60 days notice of intention to withdraw the whole or any part of the amounts so paid in by them. No member may withdraw shareholdings that are pledged as required on security on loans without the written approval of the credit committee or a loan officer, except to the extent that such shares exceed the member's total primary and contingent liability to the Credit Union. No member may withdraw any shareholdings below the amount of his/her primary or contingent liability to the Credit Union if he/she is delinquent as a borrower, or if borrowers for whom he/she is comaker, endorser, or guarantor are delinquent, without the written approval of the credit committee or loan officer.

10. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $5. The dividend period of the Credit Union is quarterly.

11. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union are federally insured by the National Credit Union Share Insurance Fund.

12. *Other Terms and Conditions.* [In this item, which may be titled or subdivided in any manner by each credit union, NCUA suggests that the following issues be covered or handled: Statutory lien or setoff; expenses (garnishments and bankruptcy orders and holds on account); joint ownership accounts; trust accounts; payable-on-death accounts; retirement accounts; Uniform Transfer to Minor Act accounts; sole proprietorship accounts; escrow and custodial accounts; corporation accounts; not-for-profit corporation accounts; voluntary association accounts; partnership accounts; public unit accounts; powers of attorney (guardianship orders); tax disclosures and certifications; Uniform Commercial Code variances; amendments; reliance on signature card; change of address; incorporations of other documents by reference, such as expedited funds availability policies, service charges schedules or electronic banking disclosures; ability to suspend services; and operational matters (stop payment orders—verbal and written, satisfactory identification, refusal of deposits not in proper form, wire transfers, stale check deposits, availability of periodic statements or passbook feature.)]

Note: This form is modeled on the share account disclosures in the *Accounting Manual for FCUs*, § 5150.7. The disclosures are for a variable-rate, daily balance method dividend calculation regular share account in an FCU with a $500 minimum balance to avoid service fees. For the example, the account was opened on May 1, 1995. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures will reflect the prospective dividend rate for a given dividend period. Item nos. 1–8 reflect standard TISA and part 707 disclosures discussed in sections B–1 through B–3 of this appendix. Note that if the credit union limits the maximum amount of shares which may be held by one member under *NCUA Standard FCU Bylaws*, Art. III, section 2, that this should be stated in item no. 7, transaction limitations. Item no. 9 reflects various terms provided in Art. III, sections 3–6 of the *NCUA Standard FCU Bylaws*. If this were a passbook account, then the requirements of Art. IV, Receipting for Money—Passbooks, in the *NCUA Standard FCU Bylaws* would also be included in item no. 9. Item no. 10 reflects the par value amount of regular shares in a federal credit union, pursuant to section 117 of the FCU Act, 12 U.S.C. 117, and Art. XIV, section 3 of the *NCUA Standard FCU Bylaws*. It also states the dividend period of the credit union, which is set by the board of directors. Item no. 11 addresses the requirements of 12 CFR part 740. Nonfederally insured credit unions (NICUs) would be expected to disclose information required by section 151 of the Federal Deposit Insurance Corporation Improvement Act of 1991. 12 USC 1831t. By December 19, 1992, all NICUs were required to include conspicuously on all periodic statements of account, signature cards, passbooks, share certificates and other similar instruments of deposit and in all advertising a notice that the credit union is not federally insured. Additional disclosures will be required of NICUs by June 19, 1994. Item no. 12 is inserted to ensure that credit unions add other account terms and conditions not covered by the proposed regulation. These sorts of terms are contemplated by proposed § 707.3(b), requiring that the disclosures reflect the terms of the legal obligation between the member and the credit union. This list is not meant to be exhaustive, but to give a general idea of other topics often covered in share account contracts. Item no. 12 is not expressly required by either TISA or part 707, but any of these terms that are disclosed must be accurate and not misleading. Also the Board strongly recommends that such terms are included in account opening disclosures to inform the membership and to clearly set forth the legal relationship between the members and their credit union.

B–7 Sample Form (Share Draft Account Disclosures)

Share Draft Account Disclosures

1. *Rate information.* As of January 1, 1995, the dividend rate was 3.00% and the annual percentage yield (APY) was 3.04% on your share account. In addition, the prospective dividend rate on your account is 3.15% with a prospective annual percentage yield (APY) of 3.20% for the current dividend period. The dividend rate and APY may change every dividend period as determined by the credit union board of directors.

2. *Compounding and crediting.* Dividends will be compounded monthly and will be credited monthly. For this account type, the dividend period is monthly, for example, the beginning date of the first dividend period of the calendar year is January 1 and the ending date of such dividend period is January 31. All other dividend periods follow this same pattern of dates. The dividend declaration date follows the ending date of a dividend period, and for the example above is February 1. If you close your share draft account before dividends are credited, you will not receive accrued dividends.

3. *No Minimum balance requirements apply to this account.*

4. *Balance computation method.* Dividends are calculated by the average daily balance method which applies a periodic rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the balance in the account for each day of the period and dividing that figure by the number of days in the period.

5. *Accrual of dividends.* Dividends will begin to accrue no later than the business day we receive provisional credit for the placement of noncash items (e.g. checks) to your account.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies—$5.00 per statement.
b. Account inquiries—$3.00 per inquiry.
c. Dormant account fee—$10.00 per month.
d. Wire transfers—$8.00 per transfer.
e. Overdrafts/Returned Items—$5.00 per draft.
f. Share transfer—$1.00 per transfer.
g. Excessive share withdrawals—$1.00 per item.
h. Certified checks—$5.00 per check.
i. Stop Payment Order—$5.00 per order.
j. Check Printing Fee—$12.00 per 200 checks (varies depending on style of check ordered).

7. *No transaction limitations apply to this account.*

8. *Nature of dividends.* Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

9. *Bylaw Requirements.* A member who fails to complete payment of one share within ________ of his admission to membership, or within ________ from the increase in the par value in shares, or a member who reduces his share balance below the par value of one share and does not increase the balance to at least the par value of one share within ________ of the reduction may be terminated from membership at the end of a dividend period. [All blanks should be filled with time chosen by credit union board of directors, but must be at least 6 months.] Shares may be transferred only from one member to another, by written instrument in such form as the Credit Union may prescribe. The Credit Union reserves the right, at any time, to require members to give, in writing, not more than 60 days notice of intention to withdraw the whole or any part of the amounts so paid in by them. Shares paid in under an accumulated payroll deduction plan may not be withdrawn until credited to a member's account. No member may withdraw shareholdings that are pledged as required on security on loans without the written approval of the credit committee or a loan officer, except to the extent that such shares exceed the member's total primary and contingent liability to the Credit Union. No member may withdraw any shareholdings below the amount of his/her primary or contingent liability to the Credit Union if he/she is delinquent as a borrower, or if borrowers for whom he/she is comaker, endorser, or guarantor are delinquent, without the written approval of the credit committee or loan officer.

10. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $5. The dividend period of the Credit Union is monthly, beginning on the first of a month and ending on the last day of the month.

11. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union are federally insured by the National Credit Union Share Insurance Fund.

12. *Other Terms and Conditions.* [See section B–6, item 12, of this appendix].

Note: This form is modeled on the share account disclosures in the *Accounting Manual for FCUs*, § 5150.7. The disclosures are for a variable-rate, average daily balance method dividend calculation share draft account in an FCU with no minimum balance requirement. For purposes of this example, the account was opened on January 15, 1995. The Credit Union has monthly dividend periods. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures will reflect the prospective dividend rate for a given dividend period. The disclosures are very similar to the ones in section B–6 of appendix B, except for the rollback and par value disclosures, which have been removed from the final rule and appendices.

B–8 Sample Form (Money Market Share Account Disclosures)

Money Market Share Account Disclosures

1. *Rate information.* As of January 1, 1995, if your average daily balance was $500 or more, the dividend rate paid on the entire balance in your account was 4.75%, with an annual percentage yield (APY) of 4.85%. If your average daily balance is $500 or more, a prospective dividend rate of 4.95% will be paid on the entire balance in your account with a prospective APY of 5.00% for this dividend period on your account. The dividend rate and APY may change every dividend period as determined by the credit union board of directors.

2. *Compounding and crediting.* Dividends will be compounded monthly and will be credited quarterly. If you close your share money market account before dividends are credited, you will not receive accrued dividends.

3. *Minimum balance requirements.* The minimum balance required to open this account is $500. You must maintain a minimum daily balance of $500 in your account to avoid a service fee. If, during any (time period), your account falls below the required minimum daily balance, your account will be subject to a service fee of $5 for that (time period).

4. *Balance computation method.* Dividends are calculated by the average daily balance method which applies a periodic rate to the average daily balance in your account for the period. The average daily balance is

calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

5. *Accrual of dividends.* Dividends will begin to accrue on the business day you deposit noncash items (e.g., checks) to your account.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies—$5.00 per statement.

b. Account inquiries—$3.00 per inquiry.

c. Dormant account fee—$10.00 per month.

d. Wire transfers—$8.00 per transfer.

e. Minimum balance violation—$5.00 per day.

f. Share transfer—$1.00 per transfer.

g. Excessive share withdrawals—$1.00 per item.

h. Certified checks $5.00 per check.

i. Stop Payment Order $5.00 per order.

j. Check Printing Fee—$12.00 per 200 checks (varies depending on style of check ordered).

7. *Transaction limitations.* During any statement period, you may not make more than six withdrawals or transfers to another credit union account of yours or to a third party by means of a preauthorized or automatic transfer or telephonic order or instruction. No more than three of the six transfers may be made by check, draft, debit card, if applicable, or similar order to a third party. If you exceed the transfer limitations set forth above in any statement period, your account will be subject to closure by the credit union or to a fee of $1.00 per item.

8. *Nature of dividends.* Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

9. *Bylaw Requirements.* [This section should reflect any requirements concerning share accounts in the FISCU's bylaws or charter.]

10. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $50. The dividend period of the Credit Union is monthly, beginning on the first of a month and ending on the last day of the month.

11. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union are federally insured by the National Credit Union Share Insurance Fund.

12. *Other Terms and Conditions.* [See section B–6, item 12, of this appendix.]

Note: This form is modeled on the share account disclosures in the Accounting Manual for FCUs, § 5150.7 and on the share draft account disclosures in section B–7 of this appendix. The disclosures are for a variable-rate, tiered-rate (method A, option 1), average daily balance method dividend calculation, money market share account in a FISCU with a $500 minimum balance to open the account and to avoid service fees. For purposes of this example, the account was opened on January 29, 1995. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures will reflect the prospective dividend rate for a given dividend period. Note that the contents of Item 9, Bylaw requirements, must be tailored to the specific bylaws of a FISCU or NICU. Also note the high par value amount in Item 10.

B–9 Sample Form (Term Share (Certificate) Account Disclosures)

Term Share (Certificate) Account Disclosures

1. *Rate information.* [Repeat rates disclosed on face of term share certificate, see B–5, Sample Form (Term Share (Certificate) Account.]

2. *Compounding and crediting.* Dividends will be compounded monthly and will be credited annually. If you close your certificate account before dividends are credited, you will not receive accrued dividends.

3. *Minimum balance requirements.* The minium balance required to open this account is $500.

4. *Balance computation method.* Dividends are calculated by the daily balance method, which applies a daily periodic rate to the principal in your account each day.

5. *Accrual of dividends.* Dividends will begin to accrue on the business day you deposit noncash items (e.g., checks) to your account.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies—$5.00 per statement.

b. Account inquiries—$3.00 per inquiry.

c. Share transfer— $1.00 per transfer.

7. *Transaction limitations.* After the account is opened, you may not make deposits into the account until the maturity date stated on the certificate.

8. *Maturity date.* Your account will mature on January 1, 1996.

9. *Early withdrawal penalties.* We may impose a penalty if you withdraw any of the funds before the maturity date. The penalty will equal three months' dividends on your deposit.

10. *Renewal policies.* Your certificate account will automatically renew at maturity. You will have a grace period of 10 business days after the maturity date to withdraw the funds in the account without being charged an early withdrawal penalty.

11. *Bonus.* You will receive a new (insert brand name) toaster-oven as a bonus when you open the account after December 31, 1994, and before June 30, 1995. You must maintain your entire principal on deposit until the maturity date of your certificate account to obtain the bonus.

12. *Nature of dividends.* Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

13. *Bylaw Requirements.* [This section should reflect any requirements concerning share accounts in the FISCU's bylaws or charter.]

14. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $25. The dividend period of the Credit Union on this type of account is annual, beginning on the date the account is opened, and ending on the stated maturity date, unless renewed.

15. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union are federally insured by the National Credit Union Share Insurance Fund.

16. *Other Terms and Conditions.* [See section B–6, item 12, of this appendix.]

Note: Even though this disclosure if for an account at a FISCU, this form is modeled on the share account disclosures in the *Accounting Manual for FCUs,* § 5150.7 and upon the regular share account disclosures in section B–6 of this appendix. The disclosures are for a fixed-rate, daily balance method dividend calculation, automatically renewing term share certificate account in a FISCU with a $500 minimum balance to open the account and a ten day grace period. For the example, the account is opened on January 1, 1995 and matures on January 1, 1996. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures reflect the contracted, prospective dividend rate for a given dividend period. Note the special disclosures for term share certificate accounts, items nos. 8–10. Note also the bonus disclosure, item no. 11.

B–10 Sample Form (Periodic Statement)

Periodic Statement

Member Name

Account Number

[Transaction account activity by date.]

[Average daily balance of $1,500 for the month, daily compounding.]

Your account earned $6.72, with an annual percentage yield earned of 5.40%, for the statement period from May 1 through and including May 31. In addition, your account earned $15 in extraordinary dividends for this period. Any fees assessed against your account are shown in the body of the periodic statement and are identified by the code at the bottom margin of this statement.

Service Charge Codes

SC–1 Stop Payment Order Fee
SC–2 Statement Copy Fee
SC–3 Draft Return Fee
SC–4 Transfer from Shares
SC–5 Microfilm Copy
SC–6 Share Draft Printing Fee
SC–7 Dormant Account Fee
SC–8 Wire Transfer Fee
SC–9 Excessive Share Withdrawal Fee
SC–10 ____________

Other Transactions

D Dividends
EC Error Correction
OR Overdraft Returned
OL Overdraft Loan
OS Overdraft Share Transfer

Note: This form is modeled on the share draft statement of account, Form FCU 107G–SD, in the *Accounting Manual for FCUs,* § 5150.4. All information is self-explanatory. Codes of transactions are not required, but are a common credit union practice. The information regarding fees could also be included on the line of the periodic statement showing when the fees were debited from the account. Alternatively, a credit union could show all fees debited against the account for the statement period in a special area of the periodic statement. Clarity to the member of the required information—annual percentage yield earned; amount of dividends; fees imposed and length of period—is the important goal. An additional disclosure regarding the dollar value of any extraordinary dividends earned must be added to those statements showing the payment of such extraordinary dividends to the member.

B-11 **Sample Form (Rate and Fee Schedule)**

Rate and Fee Schedule

This Rate and Fee Schedule for all Accounts sets forth certain conditions, rates, fees and charges applicable to your regular share, share draft, and money market accounts at the _________ Federal Credit Union as of _________ [insert date of delivery to member]. This schedule is incorporated as part of your account agreement with the _________ Federal Credit Union.

Regular Share

Dividend Rate as of Last ______%, Dividend Declaration Date.
Annual Percentage Yield as of ______%, Last Dividend Declaration Date.
Prospective Dividend Rate ______%.
Prospective Annual Percentage ______%, Yield.
Dividends Compounded [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].
Dividends Credited—At close of a dividend period.
Dividend Period [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].
Minimum Opening Deposit $5.00 par value share.
Minimum Monthly Balance [None, $ amount].

Share Draft

Dividend Rate as of Last ______%, Dividend Declaration Date.
Annual Percentage Yield as of______%, Last Dividend Declaration Date.
Prospective Dividend Rate ______%.
Prospective Annual Percentage ______%, Yield.
Dividends Compounded [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].
Dividends Credited—At close of a dividend period.
Dividend Period [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].
Minimum Opening Deposit [None, $ amount].
Minimum Monthly Balance [None, $ amount].

Money Market

Dividend Rate as of Last ______%, Dividend Declaration Date.
Annual Percentage Yield as of ______%, Last Dividend Declaration Date.
Prospective Dividend Rate ______%.
Prospective Annual Percentage ______%, Yield.
Dividends Compounded [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].
Dividends Credited—At close of a dividend period.
Dividend Period [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].
Minimum Opening Deposit [None, $ amount].
Minimum Monthly Balance [None, $ amount].
The following fees may be assessed in connection with your accounts:

Fees Applicable to All Accounts

Returned item fee—$____.00 per item.
Account reconciliation fee—$____.00 per hour.
Statement copies fee—$____.00 per statement.
Certified draft fee—$____.00 per draft.
Wire transfer fee—$____.00 per transfer.
Account inquiry fee—$____.00 per inquiry.
Dormant account fee—$____.00 per month.
Minimum balance violation fee—$____.00 per day.
Share transfer fee—$____.00 per transfer.
Excessive share withdrawals fee—$____.00 per item.

Share Draft Account Fees

Monthly service fee—$____.00 per month.
Overdraft transfers fee—$__*.00 per overdraft.
Drafts returned insufficient funds fee—$____.00 per draft.
Stop payment order fee—$____.00 per order.
Draft copy fee—$____.00 per copy.
Check printing fee—$____.00 per 200 drafts.

Money Market Share Account Fees

Monthly service fee—$____.00 per month.
Check printing fee—$____.00 per 200 drafts.

Note: This illustration is for use of an FCU. The information provided on a Rate and Fee Schedule can be presented in any format. To ensure that it is a part of the account agreement, if used, it should be incorporated by reference into the appropriate share account disclosures. The figures used are illustrative only, except for the overdraft transfer fee of $1.00 per overdraft and the excessive share transfer fee of $1.00 per item, which are set in the *NCUA Standard FCU Bylaws*, Art. III, sections 4 and 5(f), respectively.

PART 740—ADVERTISING

4. The authority citation for part 740 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1789 and 4311.

5. Section 740.2 is amended by revising the first sentence to read as follows:

§ 740.2 Accuracy of advertising.

No insured credit union shall use any advertising (which includes print or broadcast media, displays and signs, stationery, and all other promotional material) or make any representation which is inaccurate or deceptive in any particular, or which in any way misrepresents its services, contracts, or financial condition, or which violates the requirements of § 707.8 of this subchapter, if applicable. * * *

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