(HVI) classification services under the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476) was $2.00 per bale during the 2008 harvest season as determined by using the formula provided in the 1987 Act. The fee covered salaries, costs of equipment and supplies, and other overhead costs, including costs for administration and supervision. Also, the fee structure for the 2007 crop year was incorporated under the authority of the Cotton Standards Act of 1923 (7 U.S.C 51–65), by an interim final rule effective October 1, 2007 (72 FR 56242).

Section 14201 of the 2008 Farm Bill provides that: (1) The Secretary shall make available cotton classification services to producers of cotton, and provide for the collection of classification fees from participating producers or agents that voluntarily agree to collect and remit the fees on behalf of the producers; (2) classification fees collected and the proceeds from the sales of samples submitted for classification shall, to the extent practicable, be used to pay the cost of the services provided, including administrative and supervisory costs; (3) the Secretary shall announce a uniform classification fee and any applicable surcharge for classification services not later than June 1 of the year in which the fee applies; and (4) in establishing the amount of fees under this section, the Secretary shall consult with representatives of the United States cotton industry. At pages 313–314, the Joint Explanatory Statement of the committee of conference for section 14201 stated the expectation that the cotton classification fee would be established in the same manner as was applied during the 1992 through 2007 fiscal years. The classification fee should continue to be a basic, uniform fee per bale fee as determined necessary to maintain cost-effective cotton classification service. Further, in consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee.

Under the provisions of section 14201, a user fee (dollar per bale classed) is established that, when combined with other sources of revenue, will result in projected revenues sufficient to reasonably cover budgeted costs—adjusted for inflation—and allow for adequate operating reserves to be maintained. Costs considered in this method include salaries, costs of equipment and supplies, and other overhead costs, such as facility costs and costs for administration and supervision. In addition to covering expected costs, the user fee is set such that projected revenues will generate an operating reserve adequate to effectively manage uncertainties related to crop size and cash-flow timing while meeting minimum reserve requirements set by the Agricultural Marketing Service, which require maintenance of a reserve fund amount equal to four months of projected operating costs.

Extensive consultations regarding the establishment of the classification fee with U.S. cotton industry representatives were held during the period from September 2008 through January 2009 during numerous publicly held meetings. Representatives of all segments of the cotton industry, including producers, ginners, bale storage facility operators, merchants, cooperatives, and textile manufacturers were addressed in various industry-sponsored forums.

The user fee established to be charged cotton producers for High Volume Instrument (HVI) classification in 2009 is $2.20 per bale. This fee is based on the pre-season projection that 14.5 million bales will be classed by the United States Department of Agriculture during the 2009 crop year.

Accordingly § 28.909, paragraph (b) would reflect the increase of the HVI classification fee to $2.20 per bale.

A 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 would remain at 5 cents per bale. The fee in § 28.910(b) for an owner receiving classification data from the National database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the National database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 would increase to $2.20 per bale.

The fee for returning samples after classification in § 28.911 would remain at 50 cents per sample.

A 15-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective for the 2009 cotton crop on July 1, 2009.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 28 is proposed to be amended to read as follows:

PART 28—[AMENDED]

1. The authority citation for 7 CFR part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 51–65; 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $2.20 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $2.20 per bale.

* * * * *

Dated: March 23, 2009.

Craig Morris,

Acting Associate Administrator.

[FR Doc. E9–6805 Filed 3–23–09; 4:15 pm]

BILLING CODE

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

RIN 3133–AD57

Truth in Savings Act Disclosures

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: As required by the Truth in Savings Act (TISA), NCUA is proposing to amend its TISA rule and official staff interpretation to align it with the Federal Reserve Board's Regulation DD. Specifically, the rule would amend the provisions and provide guidance on the electronic delivery of disclosures.

Additionally, NCUA is proposing to amend the rule and the official staff commentary to require all credit unions to disclose aggregate overdraft fees on periodic statements; currently, this disclosure requirement only applies to credit unions that promote the payment of overdrafts. The proposed rule also addresses balance disclosures credit unions provide to members through automated systems.

DATES: Comments must be received on or before May 26, 2009.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Part 707 Truth in Savings'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's website at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment, weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6540 or send an e-mail to *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Moisette I. Green, Staff Attorney, at the address above or telephone: (703) 518–6540. For information regarding the paperwork burden, contact Michael Ryan, Risk Analysis Officer, at the address above or telephone number (703) 518–6360.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

To comply with the Truth in Savings Act (TISA), NCUA is issuing this proposed rule with request for comments, which is substantially similar to the Federal Reserve Board's (FRB's) October 2007 and December 2008 final rules. *See* 72 FR 63477 (November 9, 2007); 74 FR 5584 (January 29, 2009). TISA requires NCUA to promulgate regulations substantially similar to those the FRB issues within 90 days of the effective date of an FRB rule. 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and limitations under which they pay dividends on member accounts. *Id.*

II. Procedural and Substantive Background on Electronic Disclosure Provisions

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq.*, enacted in 2000, provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. Under the E-Sign Act, member disclosures, which are required by other laws or regulations to be provided or made available in writing, may be provided or made available in electronic form if a member affirmatively consents after receiving disclosures informing the member of: (1) The right to receive the required information in writing; (2) the consent necessary to receive electronic notices; (3) procedures to withdraw consent; (4) how to receive a paper copy of an electronic record and any fees; and, (5) the equipment needed to receive e-notices. 15 U.S.C. 7001(c).

The E-Sign Act, including the special notice and consent provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, credit unions are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the member in writing under Part 707 if the member affirmatively consents to receive electronic disclosures in the manner required by section 101(c) of the E-Sign Act. *Id.*

In April 2001, the FRB published an interim final rule to establish uniform standards for electronic delivery of disclosures under its TISA regulation, Regulation DD, 12 CFR part 230. 66 FR 17795 (April 4, 2001). The interim final rule incorporated the requirements of the E-Sign Act and required depository institutions to obtain consumers' consent to provide TISA disclosures electronically. *Id.* NCUA adopted a substantially similar rule in June 2001. 66 FR 33159 (June 21, 2001).

In October 2007, the FRB adopted final amendments changing some provisions in the interim rule adopted over six years earlier. In brief, some regulatory text was dropped and staff commentary revised in the FRB's Regulation DD to address confusion about electronic disclosure provisions, enhance consumers' ability to shop for deposit account products online, and minimize burdens on consumers and on using electronic disclosures. 72 FR 63477 (November 9, 2007). In accordance with the E-Sign Act as applied to account-opening disclosures, periodic statements, and change-in-terms notices, the FRB required depository institutions to obtain the consumer's consent, to provide the disclosures in electronic form or else provide written disclosures. The FRB deleted certain regulatory text that restated or cross-referenced the E-Sign Act's general rules regarding electronic disclosures, including the consumer consent provisions because the E-Sign Act is a self-effectuating statute. 12 CFR 230.10 (2007) (section removed by October 2007 final rule). Finally, the FRB specified the circumstances under which certain disclosures may be provided in electronic form without obtaining the consumer's consent under section 101(c) of the E-Sign Act. 15 U.S.C. 7001(c). The final rule was effective December 10, 2007, with October 1, 2008 as the compliance date.

NCUA did not issue a substantially similar rule to revise the staff commentary and remove § 707.10 in 2007 but is incorporating those changes now along with other changes the FRB made to its Regulation DD in December 2008. The Board believes the delayed compliance date for credit unions and their members has not negatively affected them because it is unaware of any significant confusion for credit unions or their members about credit unions' obligation to obtain members' consent to provide disclosures electronically, as required by the E-Sign Act.

III. Background on Overdraft Services and Regulatory Action

In recent years, many credit unions have largely automated the overdraft payment process,[1] and use automation to set the criteria for determining whether to honor overdrafts and the limits on overdraft coverage provided. Overdraft services vary among credit unions but often share certain common characteristics. While credit unions generally do not initially underwrite on an individual account basis when enrolling a member in the service, most

[1] NCUA's general lending rule specifically permits a federal credit union to provide overdraft protection to members if it has a written policy addressing certain requirements, such as individual and aggregate limits. 12 CFR 701.21(c)(3).

credit unions will review individual accounts periodically to determine if a member continues to qualify for the service, and the amounts that may be covered.

Most credit unions disclose that the payment of overdrafts is discretionary and that the credit union has no legal obligation to pay any overdraft. In the past, credit unions generally provided overdraft coverage only for check transactions; however, in recent years, the service has been extended to cover overdrafts resulting from non-check transactions, including withdrawals at automated teller machines (ATMs), automated clearinghouse (ACH) transactions, point-of-sale debit card transactions, pre-authorized automatic debits from a member's account, telephone-initiated funds transfers, and online banking transactions. A flat fee is charged when an overdraft is paid, regardless of the overdraft amount. Credit unions commonly charge the same amount for paying an overdraft as they would if they returned the item unpaid. A daily fee also may apply for each day the account remains overdrawn.

In February 2005, NCUA, along with the FRB, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, published guidance on overdraft protection programs in response to concerns about aspects of the growing marketing, disclosure, and implementation of overdraft services. 70 FR 9127 (February 24, 2005) (Joint Guidance). The Joint Guidance addressed three primary areas: (1) Safety and soundness considerations; (2) legal risks; and, (3) best practices.[2] The best practices in the Joint Guidance focused on the marketing of overdraft services and the disclosure and operation of program features, including distinguishing actual available account balances from account balances that include overdraft protection amounts.

In May 2005, the FRB published revisions to Regulation DD and the official staff commentary to address concerns about the uniformity and adequacy of disclosure of overdraft fees generally, and the advertisement of overdraft services in particular. 70 FR 29582 (May 24, 2005). Under the May 2005 final rule, which became effective July 1, 2006, all depository institutions were required to specify in their account disclosures the categories of transactions for which an overdraft fee may be imposed. Depository institutions that promote the payment of overdrafts in an advertisement were required to include in the advertisements certain information about the costs associated with the service and the circumstances under which the credit union would not pay an overdraft.

Depository institutions were also required to disclose separately on their periodic statements the total amount of fees or charges imposed on the account for paying overdrafts and the total amount of fees charged for returning items unpaid. The disclosures were required to be provided for the statement period and for the calendar year-to-date. NCUA adopted a substantially similar rule for credit unions in April 2006. 71 FR 24568 (April 26, 2006).

In May 2008, under its TISA authority,[3] the FRB issued a proposed rule on new disclosure requirements under Regulation DD, which were adopted in final in December 2008. 73 FR 28739 (May 19, 2008); 74 FR 5584 (January 29, 2009). The final rule amended Regulation DD and the official staff commentary to expand the requirement to disclose overdraft fees on periodic statements to apply to all depository institutions, and not just those that promote the payment of overdrafts. The final rule includes format requirements to help make the aggregate fee disclosures more effective and noticeable to consumers. Additionally, the final rule requires an account balance, which is disclosed to consumers by an automated system such as an ATM, Web site, or telephone response system, to exclude additional amounts institutions may provide or which institutions may transfer from another account to cover an item where there are insufficient funds in an account. The rule is designed to ensure consumers are not confused or misled about the available funds in their accounts when they request account balances. The final rule permits an institution to disclose an additional balance that includes funds provided by a discretionary overdraft service or a line of credit, or funds that could be transferred from a consumer's linked individual or joint account, so long as the institution prominently states the balance includes these additional amounts.[4]

The Proposed Rule

The Board is proposing to revise NCUA's TISA rule to adopt the FRB's recent changes to Regulation DD and its accompanying staff commentary. NCUA is required to issue rules substantively similar to those of the FRB within 90 days of the effective date of the FRB's rules. 12 U.S.C. 4311(b). The FRB's most recent final rule will not be effective until January 1, 2010, and the Board wants to permit credit unions to comment on the proposed changes to the TISA rule and allow sufficient time for necessary operational adjustments. To ensure uniformity in disclosure requirements for financial institutions, the Board intends for the provisions dealing with electronic disclosure to be effective within 30 days of a final rule but, for the provisions changing disclosure requirements for overdraft programs, to issue provide the same effective date as the FRB's recent final amendments to Regulation DD, namely, January 1, 2010. The Board encourages interested parties to submit comments on this proposal but commenters should keep in mind that NCUA's TISA regulation must be substantially similar to the FRB's rule and vary only to the extent necessary to address unique credit union differences. A section-by-section discussion of the proposed revisions follows below.

IV. Section-by-Section Analysis

Section 707.3 General Disclosure Requirements

Section 707.3(a) prescribes the form of disclosures required for member accounts and generally requires credit unions to provide the disclosures in writing and in a form a member or potential member may keep. The proposed rule would revise § 707.3(a) to clarify that credit unions may provide disclosures to members or potential members in electronic form, subject to compliance with the consent and other applicable provisions of the E-Sign Act.

[2] The Office of Thrift Supervision published similar guidance focusing on safety and soundness considerations and best practices. *See* 70 FR 8428 (February 18, 2005).

[3] In May 2008, NCUA, the FRB, and the Office of Thrift Supervision (OTS) jointly proposed substantive consumer protections under the Federal Trade Commission Act, the so-called unfair and deceptive acts and practices (UDAP) rule that, among other matters, addressed concerns that consumers may not adequately understand the costs of overdraft services or how overdraft services operate generally. 73 FR 28904 (May 19, 2008). Among other provisions, the proposed rule would have required consumers to have the right to opt out of the payment of overdrafts but the provision was dropped from UDAP when it was finalized in December based on the agencies' decision to address disclosures on overdraft services through TISA regulations. NCUA adopted the UDAP provisions in its Credit Practice Rule in Part 706.

[4] The FRB has proposed opt-out requirements for overdraft programs using its authority under the Electronic Fund Transfer Act and Regulation E. 74 FR 5212 (January 29, 2009). As an alternative, the Regulation E proposal would also require financial institutions to provide customers an opt-in to payment of overdrafts for ATM and debit transactions, and includes a proposed model opt-in notice. The Regulation E proposal would apply to all financial institutions, including credit unions.

Some credit unions may provide disclosures to members or potential members both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those credit unions, the proposal would permit the duplicate electronic form of the disclosures to members or potential members without regard to the consent or other provisions of the E-Sign Act because the electronic form of the disclosure would not be used to satisfy the regulation's disclosure requirements. The proposed revisions to § 707.3(a) would also permit credit unions to provide the disclosures required by §§ 707.4(a)(2) (disclosures provided upon request) and 707.8 (advertising) in electronic form, under the circumstances in those sections, without regard to the consent or other provisions of the E-Sign Act.

Section 707.8 currently requires that, if certain information is stated in an advertisement, or if an advertisement promotes the payment of overdrafts, the advertisement must also include specified disclosures. The Board believes that, for an advertisement accessed by a member or potential member in electronic form, permitting credit unions to provide the required disclosures in electronic form without regard to the consent and other provisions of the E-Sign Act will eliminate a potential, significant burden on electronic commerce without increasing the risk of harm to members or potential members. This approach will facilitate shopping for deposit products by enabling members or potential members to receive important disclosures at the same time they access an advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring members or potential members to follow the consent procedures in the E-Sign Act in order to access an online advertisement is potentially burdensome and could discourage members from shopping for deposit products online. Moreover, because the members or potential members are viewing the advertisement online, there appears to be little, if any, risk that a member or potential member will be unable to view the disclosures online as well.

Similarly, the current § 707.4(a)(2) requires credit unions to provide disclosures with account terms and conditions upon request. If a member or potential member is not present at the credit union and requests the account disclosures, it appears unnecessary and burdensome to require the member or potential member to go through the E-Sign consent procedures before the request could be satisfied, as long as the member or potential member agrees the disclosures can be provided electronically. Applying the E-Sign consent procedures in this context could actually discourage members or potential members from requesting the disclosures.

Currently, § 707.3(g) contains a cross-reference to § 707.10 for rules governing the delivery of electronic disclosures. NCUA is proposing to delete § 707.3(g) for the same reasons it proposes to delete § 707.10, as discussed below.

Section 707.4 Account Disclosures

Credit unions generally must provide account-opening disclosures to members or potential members before an account is opened or a service is provided. Credit unions may delay delivering disclosures if a member or potential member is not present at the credit union when the account is opened or service is provided. Section 707.4(a)(1) provides that, in such cases, account-opening disclosures must be mailed or delivered within ten business days. The rationale underlying the ten-day grace period is credit unions cannot provide written disclosures immediately when, for example, an account is opened by telephone. The proposed rule would clarify credit unions opening accounts by electronic communication, for example, on the internet, may not delay providing disclosures under § 707.4(a)(1). The difficulties in providing disclosures for accounts opened by mail or telephone do not exist for requests to open accounts received by electronic communication using visual text; disclosures can be provided at the same time. Thus, the proposed rule would amend paragraph (ii) to § 707.4(a)(1) and require disclosures must be provided before accounts are opened using electronic communication.

Section 707.4(a)(2)(i) provides that, if a member or potential member is not present at the credit union when a request for account disclosures is made, the credit union must mail or deliver the disclosures within a reasonable time after the credit union receives the request. The Board believes ten days is a reasonable time. The rule in § 707.4(a)(2)(i) allows credit unions to mail or deliver disclosures either in paper form or electronically to members or potential members who are not present at the credit union when they make their request. Under the proposal, to provide the requested disclosures electronically, the credit union must send the disclosures to the member or potential member's e-mail address, or send a notice alerting the member or potential member to the location of the disclosures, such as on the credit union's internet Web site.

Staff Interpretation—Section 707.8 Advertising

The current § 707.8 addresses requirements for advertisements for member accounts, including the requirement that, if an advertisement includes certain ''trigger terms'' such as a bonus or the annual percentage yield, the advertisement must also include certain disclosures. Section 707.8 requires that, if an advertisement includes trigger terms, the advertisement itself must ''state'' the required disclosures ''clearly and conspicuously.'' Therefore, under the existing regulation, providing paper disclosures for an advertisement in electronic form, or vice versa, would not comply because the disclosures would not be stated in the advertisement itself.

Comment 8(a)–9 provides that in an electronic advertisement, the required disclosures need not be shown on each page where a ''trigger term'' appears, as long as each page includes a cross-reference to the page where the required disclosures appear. For example, if a ''trigger term'' appears on a particular web page, the additional disclosures may appear on another Web page if there is a clear reference to that page, which may be accomplished, for example, by including a link.

The proposed rule would add a new comment 8(a)–11 to clarify that rules regarding advertising disclosures provided in electronic form would also apply to the disclosures described in § 707.11(b), which are incorporated by reference in § 707.8(f). Section 707.8(b) permits credit unions to state a rate of return in addition to an annual percentage yield (APY), as long as the rate is stated in conjunction with, but not more conspicuously than, the APY.

Comment 8(b)–4 states that, in an advertisement using electronic communication, a member must be able to view both rates simultaneously and this requirement is not satisfied if the member can view the APY only by use of a link that takes the member to another web location. The proposed rule would delete Comment 8(b)–4. The regulatory requirement is to state the rate of return in conjunction with, but not more conspicuously than, the APY, and this rule applies in the electronic context as well. The Board believes the rule can be applied with some flexibility to account for variations in devices members may use to view electronic advertisements. Therefore, using scrolling or links would not necessarily fail to comply with the regulation;

however, credit unions should ensure electronic advertisements comply with the equal conspicuousness requirement. As for the electronic devices members might use to conduct financial transactions, for example, personal digital assistants, Internet-enabled cell phones, and other small hand-held devices, the Board believes disclosures would comply with the ''clear and conspicuous'' requirement as long as they are provided in a manner that would be clear and conspicuous if viewed on a typical home personal computer monitor.

Section 707.8(e) exempts from some disclosure requirements advertisements made through broadcast or electronic media, such as television and radio or outdoor billboards. Proposed Comment 8(e)(1)(i)–1 would provide this exemption would not apply to advertisements using electronic communication, such as internet advertisements, which do not have the same time and space constraints as radio or television advertisements.

Section 707.10 Electronic Communication

The proposed rule would delete § 707.10 that addresses the general requirements for electronic communications. The proposed deletion does not change applicable legal requirements under the E-Sign Act and has no impact on the general applicability of the E-Sign Act to TISA disclosures. The E-Sign Act is a self-effectuating statute and permits any person to use electronic records subject to the conditions it sets.

Sections 707.10(d) and (e) have addressed specific timing and delivery requirements for electronic disclosures, such as the requirement to send disclosures to a member's e-mail address or post the disclosures on a Web site and send a notice alerting the member to the disclosures. Section 707.10(e) has required credit unions to take reasonable steps to attempt to redeliver returned electronic disclosures. Tracking the FRB's rule, the Board believes these provisions are no longer necessary or appropriate. Electronic disclosures have evolved as credit unions and members have gained experience with them. The Board notes, however, increased risks to members with the use of electronic mail related to data security, identity theft, and phishing. Accordingly, the Board believes it is preferable not to mandate use of any particular means of electronic delivery of disclosures, but instead to allow credit unions to use whatever method may be best suited to particular types of disclosure, for example, account-opening, periodic statements, or change in terms.

Regarding the general disclosure requirement in § 707.3(a), credit unions would satisfy the requirement for providing electronic disclosures in a form a member can retain if they are provided in a standard electronic format that can be downloaded and saved or printed on a home personal computer. Typically, any document that can be downloaded by a member can also be printed. In a situation where the member is provided electronic disclosures through equipment under the credit union's control, such as a terminal or kiosk in the credit union's offices, the credit union could, for example, provide a printer that automatically prints the disclosures.

While the Board is not requiring disclosures to be maintained on an internet Web site for any specific time period, the general requirements of the rule continue to apply to electronic disclosures, such as the requirement to provide disclosures to members at certain specified times and in a form a member may keep. The Board expects credit unions to maintain disclosures on Web sites for a reasonable period of time, which may vary depending upon the particular disclosure, so that members have an opportunity to access, view, and retain the disclosures.

Section 707.11 Additional Disclosure Requirements Regarding Overdraft Services

11(a) Disclosure of Total Fees on Periodic Statements

Applicability of Aggregate Fee Disclosures

Although periodic statements are not required under TISA, credit unions that provide periodic statements must disclose fees or charges imposed on a member account during the statement period. 12 CFR 707.6(a)(3). Currently, § 707.11(a) requires credit unions that promote the payment of overdrafts in an advertisement to provide on periodic statements the aggregate dollar amount totals for overdraft fees and, for returned item fees, the aggregate totals for both the statement period and the calendar year-to-date.

To inform members about the fees charged for using discretionary overdraft services and to help them better understand the costs associated with their accounts, this proposed rule would expand § 707.11(a) to require all credit unions, regardless of whether they promote the payment of overdrafts, to disclose the aggregate fee information for the statement period and calendar year-to-date. The rule would also add format requirements to help make the aggregate fee disclosures more effective and noticeable to members. The proposed rule would delete examples of communications that would not trigger the aggregate fee disclosure requirement in existing § 707.11(a)(2). Additionally, the proposed commentary would clarify that the aggregate fee total does not include fees for transferring funds from another member account to avoid an overdraft, or fees charged under a service subject to 12 CFR part 226 (Regulation Z).

The intent of the proposed rule is to provide members who use discretionary overdraft services information to help them better understand the overdraft and returned item costs associated with their accounts. The aggregate fee disclosures would benefit members who overdraw their accounts with some frequency, but do not currently receive aggregate fee disclosures because their credit union does not promote its overdraft service. The Board believes the proposed rule would promote greater transparency about the terms and costs of overdraft services for all credit unions. Under the current rule, credit unions that do not promote their overdraft service may be reluctant to provide information about the service out of concern that these disclosures might trigger the aggregate fee disclosure requirements. The Board believes the rule will create consistency in disclosures and will eliminate compliance challenges inherent in a regulatory scheme based on a ''promoting'' or ''marketing'' distinction.

Additionally, the Board believes this requirement is appropriate because overdraft and returned item fees are not as predictable as many other types of account fees.

Members cannot always know when settlement on any one item will occur, particularly relative to other transactions, where a credit union processes items using different methods. Therefore, and balance inquiries may not always contain real-time balance information. Therefore, members may not realize that one overdrawn item could trigger overdrafts on other transactions and, thus, may not be able to predict the total fees that will be charged for any one overdraft occurrence. When there are multiple overdrafts, fee amounts may be significant, even though each item may represent a relatively small dollar amount. The aggregate fee disclosures would benefit members by showing the total expenditures on overdraft fees for the statement period and year, which may encourage members to explore alternatives that might be less costly.

The Board further notes some members are already receiving year-to-date totals from credit unions currently subject to the rule; thus, requiring year-to-date disclosures for all credit unions will promote consistency of disclosure across credit unions. Because the proposed rule would expand the applicability of the aggregate fee disclosures to all credit unions, the existing comment 11(a)(3)–1 would be revised, and comment 11(a)(5)–1 would be deleted.

Format of Aggregate Fee Disclosures

The proposed final rule would add proximity and format requirements to enhance the effectiveness of the disclosures and make them more noticeable. Aggregate fee disclosures must be provided in close proximity to the fees identified under § 707.6(a)(3). The Board believes uniform proximity requirements are necessary to enable members to find fee information easily so they better understand the costs of using the service. Aggregate fee disclosures would be provided using a format substantially similar to proposed Sample Form B–10.

The proposed rule would revise comment 11(a)(1)–3 to clarify that credit unions may use terminology such as ''returned item fee'' or ''NSF fee'' to describe the fees for returning items unpaid. It also would redesignate comment 11(a)(1)–6 as comment 11(a)(1)–4 and address the issue where a credit union provides a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. The comment would provide that, in these circumstances, credit unions may, but are not required to, reflect the adjustment in the total for the calendar year-to-date and in the applicable statement period. For example, if a credit union assesses a fee in January and refunds the fee in February, the credit union could disclose a year-to-date total reflecting the amount credited, but it should not affect the total disclosed for the February statement period, because the fee was not assessed in the February statement period. However, because some credit unions may assess and then waive and credit a fee within the same statement cycle, the comment is revised to clarify that, in such a case, the credit union may reflect the adjustment in the total disclosed for fees imposed during the current statement period and for the total for the calendar year-to-date. If the credit union assesses and waives the fee in February, the February fee total could reflect a total net of the waived fee.

11(b) Advertising Disclosures for Overdraft Services

Section 707.11(b)(2) lists the types of communications about the payment of overdrafts not subject to additional advertising disclosures under § 707.11(b)(1). The proposed rule would expand the list in § 707.11(b)(2) to include an opt-out or opt-in notice regarding the credit union's payment of overdrafts or provision of discretionary overdraft services.

11(c) Disclosure of Account Balances

Section 707.11(b)(1) currently requires credit unions that promote the payment of overdrafts to include certain disclosures in their advertisements about the service to avoid confusion between overdraft services and traditional lines of credit. In particular, the commentary stated that a credit union must include the additional advertising disclosures if it ''discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed on an automated system, such as a telephone response machine, ATM screen or the credit union's internet site.'' 70 FR 72895, 72901 (December 8, 2005) (adopted without change at 71 FR 24568 (April 26, 2006)).

To facilitate responsible use of overdraft services and ensure that members receive accurate information about their account balances, the proposed rule would provide that the balance credit unions disclose may not include: Any funds it may provide to cover an overdraft; funds that will be paid by the credit union under a service subject to Regulation Z; or funds transferred from another member account. The proposed rule would permit a credit union to disclose another balance that includes these additional funds, so long as the credit union prominently states the balance includes them.

Under § 707.11(c) of the proposed rule, if a credit union discloses balance information through an automated system, it would be required to disclose an account balance that excludes funds the credit union may provide to cover an overdraft in its discretion, funds that will be paid by the credit union under a service subject to Regulation Z, or funds transferred from another member account. For example, although a credit union may add a $500 cushion to the member's account balance when determining whether to pay an overdrawn item, under the proposed rule, the additional $500 would not be included in the balance provided to the member through an automated system. The Board believes the requirement to provide a balance not supplemented by overdraft funds should apply equally in these circumstances to ensure members are given an accurate account balance. Thus, the proposed rule would delete the reference to the member's inquiry.

Funds Included in and Excluded From Balance

The rule is not intended to define what funds are available under 12 CFR Part 229 (Regulation CC). Accordingly, to avoid ambiguity, the proposed rule would add § 707.11(c). As discussed below, the proposed rule would not require disclosures of real-time balances nor otherwise affect what funds a credit union considers to be available.

Additionally, the proposed rule would not permit credit unions to include amounts available under a member's overdraft line of credit with the credit union or funds from a linked account, such as a share savings account, in the balance disclosure. The Board is concerned that permitting a balance to include funds available under a member's overdraft line of credit or through a transfer from a member's share savings or other linked account would cause confusion regarding the amount a member may withdraw or spend without incurring an overdraft. Thus, the proposal would revise § 707.11(c) to clarify that a credit union must disclose a balance that does not include: additional amounts the credit union may provide in its discretion to cover an overdraft; funds that will be paid by the credit union under a service subject to Regulation Z; or funds transferred from another member account.

Proposed Comment 11(c)–1 would clarify a credit union may, but need not, include in the balance funds deposited in the member's account, such as from a check, but that are not yet made available for withdrawal in accordance with the funds availability rules under Regulation CC. Similarly, the comment states the balance may, but need not, include any funds a credit union holds to satisfy a prior obligation of the member, for example, to cover a hold for an ATM or debit card transaction that has been authorized but not settled. Section 707.11(c) would not require credit unions to provide a ''real-time'' balance, but would only prohibit credit unions from including additional overdraft funds such as a discretionary overdraft cushion in the disclosed balance.

Additional Balances

The Joint Guidance stated that, if more than one balance is provided, a

credit union should ''separately (and prominently) identify the balance without the inclusion of overdraft protection.'' 70 FR at 9132. The proposed rule would permit, but does not require, disclosure of an additional balance that includes these additional overdraft funds, which may be useful to some members. For example, members may wish to receive a balance disclosure indicating how much overdraft coverage they have available, so they can make an informed decision regarding a transaction. The proposed rule would permit an additional balance to be disclosed, so long as the credit union prominently states the balance contains additional overdraft funds.

To address concerns that members would be confused if multiple balances are disclosed to them on an automated system, new comment 11(c)–2 would provide guidance on how credit unions can appropriately identify that an additional balance includes overdraft funds. Comment 11(c)–2 would explain the credit union may not simply state, for instance, that the second balance is the member's ''available balance,'' or contains ''available funds.'' Rather, the credit union would provide enough information to convey that the second balance includes the overdraft amounts. For example, the credit union may state that the balance includes ''overdraft funds.''

Further, the Board notes proposed § 707.11(c) would not affect the existing application of the advertising disclosure rules of § 707.11(b). Thus, to the extent a credit union includes the dollar amount of a discretionary overdraft limit in a disclosed balance on an automated system, the disclosure would continue to be considered an advertisement promoting the payment of overdrafts. Therefore, credit unions would provide the disclosures required by the current § 707.11(b)(1), including the amount of overdraft fees. The existing exemption in § 707.11(b)(2) from these disclosures for ATM receipts would also continue to apply. Any receipt containing a second balance including overdraft funds, however, would be required to prominently state that those funds are included and may not simply label the second balance as the member's ''available balance'' or ''available funds.''

Many credit unions currently provide members the ability to opt out of or opt into their overdraft service. Where a member has opted out of the credit union's overdraft service, or where a credit union offers an opt-in and the member has not opted in, proposed comment 11(c)–2 would also clarify that any additional balance disclosed may not include funds provided under a credit union's overdraft service because, presumably, the member would not have access to those funds. For example, if a member has $200 in his or her account and has opted out of the credit union's overdraft service, a second balance could not reflect the additional $100 the credit union might otherwise have provided under the service. If the member is not enrolled in the credit union's overdraft service, but has a line of credit or other overdraft alternative, the additional balance could continue to include funds available pursuant to that other alternative.

Similarly, some credit unions may provide members the ability to opt out of overdraft services for ATM and debit card transactions. In this instance, a credit union would continue to offer the overdraft service for other transactions, such as check transactions. Because the credit union's overdraft service would be available for some, but not all transactions, proposed comment 11(c)–2 states that, if a credit union discloses an additional balance where a member has opted out of some but not all of the credit union's overdraft services, the credit union may choose whether to include the overdraft funds in the balance. If the credit union chooses to include the overdraft funds in the additional balance, however, it would be required to indicate the additional overdraft funds are not available for all transactions.

Automated Systems

Proposed comment 11(c)–3 explains the balance disclosure requirement would apply to any automated system through which the member requests a balance, including but not limited to, a telephone response machine, such as an interactive voice response system, at an ATM, both on the ATM screen and on receipts, or on a credit union's internet site, other than live chats with an account representative. The balance disclosure requirements would apply to account balances a credit union discloses through any ATM. Because account-holding credit unions have discretion with respect to the balances they provide to an ATM network, they ultimately determine what additional funds, whether from the credit union's discretionary overdraft service, an overdraft line of credit, or a linked account, are included in those balances. In other words, the credit union has the discretion to provide to the network only balances that exclude overdraft funds. Thus, the Board believes it is appropriate to include the information that account-holding credit unions disclose through foreign ATMs within the scope of the rule.

The proposed rule would apply only when a credit union chooses to provide balance information, or when an ATM or other electronic terminal has the capability to provide a balance only to the extent balance information is offered on an automated system. It would not require credit unions or other automated systems owners to provide balance information on automated systems available to members. The Board believes the compliance burden and enforcement challenges associated with monitoring individual conversations and responses would outweigh the benefits provided by such a rule. Therefore, the proposed rule would apply only to balance information disclosed through an automated system.

V. Regulatory Procedures

Regulatory Flexibility Analysis

The Board has prepared a regulatory flexibility analysis as required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. These disclosures allow consumers to make meaningful comparisons between different financial institutions and also allow consumers to make informed judgments about the use of their accounts. 12 U.S.C. 4301. TISA requires the Board to prescribe regulations to carry out the purpose and provisions of the statute. 12 U.S.C. 4308(a)(1), 4311(b). The Board is proposing revisions to part 707 to address the uniformity and adequacy of credit union disclosure of fees associated with overdraft services.

There are other laws credit unions must consider when administering an overdraft protection program. Although other laws and regulations may apply to credit union payment of overdrafts, the proposed revisions to part 707 do not duplicate or conflict with the requirements imposed by these laws. The Board has also considered the interagency guidance on overdraft protection programs issued in February 2005, and has determined that issuance of the proposed revisions to part 707 is consistent with the interagency guidance. 70 FR 9127 (February 24, 2005).

Approximately 3,318 of the credit unions in the United States that must comply with TISA have assets of $10 million or less and, thus, are considered small entities for purposes of the Regulatory Flexibility Act, based on 2008 call report data. The Board

believes almost all small credit unions that offer accounts where overdraft or returned-item fees are imposed currently send periodic statements on those accounts, although the number of small credit unions that promote their overdraft services is unknown. For those credit unions that do not promote the payment of overdrafts in an advertisement, periodic statement disclosures would need to be revised to display aggregate overdraft and aggregate returned-item fees for the statement period and year to date. All small credit unions will have to review and perhaps revise account-opening disclosures and marketing materials.

NCUA's Office of Small Credit Union Initiatives (OSCUI) reviewed the proposed rule and concluded the rule will have minimal impact on small credit unions. OSCUI stated small credit unions have adequate vendor processing assistance to comply with the proposed delivery, disclosure, and notice requirements in the rule. It also stated the proposed rule would result in greater efficiencies and ensure members and potential members are not confused or misled by account disclosures.

The proposed revisions to part 707 would require all credit unions to provide more complete information to members regarding overdraft services. Account-opening disclosures and marketing materials would describe more completely how fees may be triggered. Credit unions that provide overdraft services would be required to separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the total dollar amount for returning items unpaid. These disclosures would be required for the statement period and for the calendar year to date for each account to which the service is provided. Certain advertising practices would be prohibited, and additional disclosures on advertisements of overdraft services would be required.

The Board is soliciting comment on how the burden of disclosures on credit unions could be minimized. The proposed rule would limit the requirement to disclose aggregate totals for overdraft and returned-item fees for the statement period and the calendar year to date to credit unions that provide *ad hoc* payments of overdrafts or promote the payment of overdrafts in an advertisement, thereby encouraging the routine use of the service. It would also specify certain practices that would not trigger the new overdraft disclosures. The safe harbors would provide additional certainty to credit unions in determining whether compliance with the rule is required in particular circumstances. Consistent with the rule requiring periodic statement disclosures, the proposed rule would also provide safe harbors to specify circumstances when a credit union would not be required to provide additional advertising disclosures.

Under the proposed rule, credit unions would be permitted to provide an illustrative list of categories by which overdrafts may be created to generally eliminate the need to provide a change-in-terms notice each time a new channel for creating overdrafts is added. The proposed rule would also provide additional guidance regarding the types of fees that should be included in the total dollar amount of fees and charges imposed on the account for paying overdrafts and in the total dollar amount for returning items unpaid.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Board has submitted the information collection requirements in this proposed rule to the Office of Management and Budget (OMB). The NCUA may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The current OMB control number for the Truth in Savings program is 3133–0134. This information collection will be revised to address the requirements of this proposed rule.

The collection of information that would be revised by this rulemaking is found in 12 CFR part 707 and Appendix C. This collection is mandatory to evidence compliance with the requirements of part 707 and TISA. 15 U.S.C. 4301 *et seq.* Credit unions must retain records for twenty-four months. This regulation applies to all types of credit unions, not just federally-insured credit unions.

Under the proposed rule, credit unions offering certain overdraft payment services would be required to provide more complete information regarding those services. Account-opening disclosures and other marketing materials would describe more completely how fees may be triggered. Credit unions that offer the payment of overdrafts would be required to separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the total dollar amount of fees charged to the account for returning items unpaid. Credit unions would provide these disclosures for the statement period and for the calendar year to date for each account to which an overdraft payment is applied. Certain advertising practices would be prohibited, and additional disclosures in advertisements for the payment of overdrafts would be required. Although the proposed rule would add these requirements, it is expected these revisions would not significantly increase the ongoing paperwork burden of credit unions. Respondents would have a one-time burden to reprogram and update their systems to include these new notice requirements.

There are an estimated 7,990 credit unions.[5] NCUA estimates it will take the respondents, on average, 8 hours or one business day to make these one-time system changes. NCUA estimates respondents will incur a burden of 63,920 hours meeting the requirements of this proposed rule. NCUA estimates that the total, continuing annual burden for the Truth in Savings program to be 12,064,677 hours. Before this proposed rule, NCUA estimated the annual burden to be 12,076,057 hours. The annual burden under this proposed rule would decrease 11,380 burden hours due to the decrease in the number of credit unions.

NCUA invites comment on:

(1) The accuracy of NCUA's estimate of the burden of the information collection;

(2) Ways to minimize the burden of the information collection on credit unions, including the use of automated collection techniques or other forms of information technology; and

(3) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Interested parties may submit comments regarding the information collection requirements in this proposed rule. Comments should be mailed to Jeryl Fish, Paperwork Clearance Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428; faxed to (703) 518–6319; or sent by e-mail to *regcomments@ncua.gov*. Please include ''Comments on Part 707 Truth in Savings Act Disclosures'' in the comments header and send them to NCUA using one of the methods described above and to:

NCUA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6974.

[5] As of December 31, 2008, there are 7,860 federally-insured credit unions. Privately-insured credit unions must also comply with Part 707, and NCUA estimates there are approximately 130 of them.

NCUA will post comments on its Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html*. Interested persons may inspect the comments at NCUA, 1775 Duke Street, Alexandria, Virginia 22314, by appointment. To make an appointment, call (703) 518–6540, send an e-mail to *ogcmail@ncua.gov*, or send a facsimile transmission to (703) 518–6667.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. The Board requests your comments on whether the rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 707

Advertising, Consumer protection, Credit Unions, Reporting and recordkeeping requirements, Truth in Savings.

For the reasons set forth in the preamble, NCUA amends 12 CFR Part 707 and the Official Staff Commentary as set forth below:

PART 707—TRUTH IN SAVINGS

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

Authority: 12 U.S.C. 4311.

2. Section 707.1 is amended by revising paragraph (a) to read as follows:

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

(a) *Authority*. This regulation is issued by the National Credit Union Administration 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. 3201 *et seq*., Public Law 102–242, 105 Stat. 2236. Information collection requirements in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3133–0134.

* * * * *

3. Section 707.3 is amended by revising paragraph (a), to read as follows, and removing paragraph (g):

§ 707.3 General disclosure requirements.

(a) *Form*. Credit unions must make the disclosures required by §§ 707.4 through 707.6 of this part, as applicable, clearly and conspicuously, in writing, and in a form the member or potential member may keep. Credit unions may provide the disclosures required by this part to a member or potential member in electronic form, subject to compliance with the consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq*. Credit unions may provide the disclosures required by §§ 707.4(a)(2) and 707.8 to a member or potential member in electronic form without regard to the consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. Disclosures for each account offered by a credit union may be presented separately or combined with disclosures for the credit union's other accounts, as long as it is clear which disclosures are applicable to the member or potential member's account.

* * * * *

4. Section 707.4 is amended by republishing paragraph (a)(1)(i) and revising paragraphs (a)(1)(ii) and (a)(2)(i), to read as follows:

§ 707.4 Account disclosures.

(a) *Delivery of account disclosures*—

(1) *Account opening*—(i) *General*. A credit union must provide account disclosures to a 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. Except as provided in paragraph (a)(1)(ii) of this section, if a member or potential member is not present at the credit union when the account is opened or the service is provided and has not already received the disclosures, the credit union must mail or deliver the disclosures no later than 10 business days after the account is opened or the service is provided, whichever is earlier.

(ii) *Timing of electronic disclosures*. If a member or potential member who is not present at the credit union uses electronic means, for example, an Internet Web site, to open an account or request a service, the disclosures required under paragraph (a)(1) of this section must be provided before the account is opened or the service is provided.

(2) *Requests*. (i) A credit union must provide account disclosures to a member or potential member upon request. If a member or potential member who is not present at the credit union makes a request, the credit union must mail or deliver the disclosures within a reasonable time after it receives the request and may provide the disclosures in paper form or electronically if the member or potential member agrees.

* * * * *

§ 707.10 [Removed and Reserved]

4. Section 707.10 is removed and reserved.

5. Section 707.11 is amended by revising the heading, paragraphs (a), (b)(2)(x) and (b)(2)(xi), and adding paragraphs (b)(2)(xii) and (c) to read as follows:

§ 707.11 Additional disclosure requirements for overdraft services.

(a) *Disclosure of total fees on periodic statements*—(1) *General*. A credit union must separately disclose on each periodic statement, as applicable:

(i) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn; and

(ii) The total dollar amount for all fees or charges imposed on the account for returning items unpaid.

(2) *Totals required*. The disclosures required by paragraph (a)(1) of this section must be provided for the statement period and for the calendar year-to-date.

(3) *Format requirements*. The aggregate fee disclosures required by paragraph (a) of this section must be disclosed in close proximity to fees identified under § 707.6(a)(3), using a format substantially similar to Sample Form B–10 in appendix B.

(b) *Advertising disclosures for overdraft services.* * * *

(2) * * *

(x) A notice provided to a member, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee;

(xi) Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the credit union's overdraft service; or

(xii) An opt-out or opt-in notice regarding the credit union's payment of overdrafts or provision of discretionary overdraft services.

* * * * *

(c) *Disclosure of account balances.* If a credit union discloses balance information to a member through an automated system, the balance may not include additional amounts that the credit union may provide to cover an item when there are insufficient or unavailable funds in the member's account, whether under a service provided in its discretion, a service subject to part 226 of this title (Regulation Z), or a service to transfer funds from another member account. The credit union may, at its option, disclose additional account balances that include such additional amounts, if the credit union prominently states that any such balance includes such additional amounts and, if applicable, that additional amounts are not available for all transactions.

6. Amend Appendix B to part 707, by adding B–12 to read as follows:

Appendix B to Part 707—Model Clauses and Sample Forms

* * * * *

B–12—AGGREGATE OVERDRAFT AND RETURNED ITEM FEES SAMPLE FORM

	Total for this period	Total year-to-date
Total Overdraft Fees	$60.00	$150.00
Total Returned Item Fees	0.00	30.00

7. In Appendix C to Part 707, the following amendments are made:

a. In *Section 707.4—Account disclosures*, under (a)(2)(i), paragraphs 3. and 4. are revised.

b. In *Section 707.8—Advertising*, under (a) *Misleading or inaccurate advertisements*, paragraph 9. is revised and new paragraph 11. is added.

c. In *Section 707.8—Advertising*, under *(b) Permissible rates*, paragraph 4. is removed.

d. In *Section 707.8—Advertising*, under (e)(1)(i), paragraph 1. is revised.

e. *Section 707.10—Electronic Communication* is removed and reserved.

f. In *Section 707.11*, the heading is revised, (a) heading and (a)(1) heading are revised, and paragraphs (a)(1)–1. and (a)(1)–2. are removed.

g. In *Section 707.11*, paragraphs (a)(1)–3. through (a)(1)–8. are redesignated as paragraphs (a)(1)–1. through (a)(1)–6, respectively.

h. In *Section 707.11*, new paragraphs (a)(1)–2. through (a)(1)–4 are revised.

i. In *Section 707.11*, paragraph (a)(3)–1. is revised.

j. In *Section 707.11*, paragraph (a)(5)–1. is removed.

k. In *Section 707.11*, new paragraphs (c)–1. through (c)–3. are added.

The amendments read as follows:

Appendix C to Part 707—Official Staff Interpretations

* * * * *

Section 707.4—Account Disclosures

(a) Delivery of Account Disclosures

* * * * *

(a)(2) Requests

(a)(2)(i)

* * * * *

3. *Timing for response.* Ten business days is a reasonable time for responding to requests for account information that members or potential members do not make in person, including requests made by electronic means, such as by electronic mail.

4. *Use of electronic means.* If a member or potential member who is not present at the credit union makes a request for account disclosures, including a request made by telephone, e-mail, or via the credit union's Web site, the credit union may send the disclosures in paper form or, if the member or potential member agrees, may provide the disclosures electronically, such as to an e-mail address that the member or potential member provides for that purpose, or on the credit union's Web site, without regard to the consent or other provisions of the E-Sign Act. The regulation does not require a credit union to provide, nor a member or potential member to agree to receive, the disclosures required by § 707.4(a)(2) in electronic form.

* * * * *

Section 707.8—Advertising

(a) Misleading or Inaccurate Advertisements

* * * * *

9. *Electronic advertising.* If an electronic advertisement, such as an advertisement appearing on an Internet Web site, displays a triggering term, such as a bonus or annual percentage yield, the advertisement must clearly refer the member to the location where the additional required information begins. For example, an advertisement that includes a bonus or annual percentage yield may be accompanied by a link that directly takes the member to the additional information.

* * * * *

11. *Additional disclosures in connection with the payment of overdrafts.* The rule in § 707.3(a), providing that disclosures required by § 707.8 may be provided to the member in electronic form without regard to E-Sign Act requirements, applies to the disclosures described in § 707.11(b), which are incorporated by reference in § 707.8(f).

* * * * *

(e) Exemption for Certain Advertisements

(e)(1) Certain Media

(e)(1)(i)

1. *Internet advertisements.* The exemption for advertisements made through broadcast or electronic media does not extend to advertisements posted on the Internet or sent by e-mail.

* * * * *

Section 707.11 Additional Disclosures Regarding the Payment of Overdrafts

(a) Disclosure of Total Fees on Periodic Statements

(a)(1) General

* * * * *

2. *Fees for paying overdrafts.* Credit unions must disclose on periodic statements a total dollar amount for all fees or charges imposed on the account for paying overdrafts. The credit union must disclose separate totals for the statement period and for the calendar year-to-date. The total dollar amount includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another member account to avoid an overdraft, or fees charged under a service subject to part 226 of this title (Regulation Z).

3. *Fees for returning items unpaid.* The total dollar amount for all fees for returning items unpaid must include all fees charged to the account for dishonoring or returning checks or other items drawn on the account. The credit union must disclose separate totals for the statement period and for the calendar year-to-date. Fees imposed when deposited items are returned are not included. Credit unions may use terminology such as ''returned item fee'' or ''NSF fee'' to describe fees for returning items unpaid.

4. *Waived fees.* In some cases, a credit union may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. Credit unions may, but are not required to, reflect the adjustment in the total for the calendar year-to-date and in the applicable statement period. For example, if a credit union assesses a fee in January and refunds the fee in February, the credit union could disclose a year-to-date total reflecting the amount credited, but it should not affect the total disclosed for the

February statement period, because the fee was not assessed in the February statement period. If a credit union assesses and then waives and credits a fee within the same cycle, the credit union may, at its option, reflect the adjustment in the total disclosed for fees imposed during the current statement period and for the total for the calendar year-to-date. Thus, if the credit union assesses and waives the fee in the February statement period, the February fee total could reflect a total net of the waived fee.

* * * * *

(a)(3) Time Period Covered by Disclosures

1. *Periodic statement disclosures.* The disclosures under § 707.11(a) must be included on periodic statements provided by a credit union starting with the first statement period that begins after January 1, 2010. For example, if a member's statement period typically closes on the 15th of each month, a credit union must provide the disclosures required by § 707.11(a)(1) on subsequent periodic statements for that member beginning with the statement reflecting the period from January 16, 2010 to February 15, 2010.

* * * * *

(c) Disclosure of Account Balances

1. *Balance that does not include additional amounts.* For purposes of the balance disclosure requirement in § 707.11(c), if a credit union discloses balance information to a member through an automated system, it must disclose a balance that excludes any funds the credit union may provide to cover an overdraft pursuant to a discretionary overdraft service that will be paid by the credit union under a service subject to part 226 of this title (Regulation Z) or that will be transferred from another account held individually or jointly by a member. The balance may, but need not, include funds that are deposited in the member's account, such as from a check, that are not yet made available for withdrawal in accordance with the funds availability rules under part 229 of the title (Regulation CC). In addition, the balance may, but need not, include funds that are held by the credit union to satisfy a prior obligation of the member, for example, to cover a hold for an ATM or debit card transaction that has been authorized but for which the credit union has not settled.

2. *Additional balance.* The credit union may disclose additional balances supplemented by funds that may be provided by the credit union to cover an overdraft, whether pursuant to a discretionary overdraft service, a service subject to part 226 of this title (Regulation Z), or a service that transfers funds from another account held individually or jointly by the member, so long as the credit union prominently states that any additional balance includes these additional overdraft amounts. The credit union may not simply state, for instance, that the second balance is the member's ''available balance,'' or contains ''available funds.'' Rather, the credit union should provide enough information to convey that the second balance includes these amounts. For example, the credit union may state that the balance includes ''overdraft funds.'' Where a member has opted out of the credit union's discretionary overdraft service, any additional balance disclosed should not include funds credit unions provide under that service. Where a member has opted out of the credit union's discretionary overdraft service for some, but not all transactions, *e.g.*, the member has opted out of overdraft services for ATM and debit card transactions, a credit union that includes funds from its discretionary overdraft service in the balance should convey that the overdraft funds are not available for all transactions. For example, the credit union could state that overdraft funds are not available for ATM and debit card transactions.

3. *Automated systems.* The balance disclosure requirement in § 707.11(c) applies to any automated system through which the member requests a balance, including, but not limited to, a telephone response system, the credit union's internet site, or an ATM. The requirement applies whether the credit union discloses a balance through an ATM owned or operated by the credit union or through an ATM not owned or operated by the credit union, including an ATM operated by an entity that is not a financial institution. If the balance is obtained at an ATM, the requirement also applies whether the balance is disclosed on the ATM screen or on a paper receipt.

* * * * *

By the National Credit Union Administration Board, on March 19, 2009.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E9–6728 Filed 3–25–09; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 741, 748, and 749

RIN 3133–AD56

Credit Union Reporting

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA is modernizing the way insured credit unions submit reports and other important information and has developed an online, Web-based system to make reporting more efficient and cost effective. The new system will also enhance the accuracy of information by providing a means for updating certain data outside the financial reporting cycle. NCUA is proposing revisions to its regulations involving reporting procedures and record retention requirements to conform regulatory provisions to the new online system. The proposal incorporates into the regulation a statutory requirement on reporting changes in senior officials resulting from election or appointments and would clarify requirements on when credit unions file reports with NCUA online. The proposal also includes provisions that provide alternative reporting methods for credit unions unable to submit online reports.

DATES: Comments must be received on or before May 26, 2009.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Proposed Rule—Parts 741, 748 and 749'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/comments.html* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6540 or send an e-mail to *ogcmail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Amber Gravius, Risk Management Officer, Office of Examination and Insurance, (703) 518–6360; George Curtis, Corporate Program Specialist, Office of Corporate Credit Unions, (703) 518–6640; or Moisette Green, Staff Attorney, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION: NCUA is modernizing the way insured credit unions submit reports and other important information. The current software used to submit the Report of Officials and financial reports will be replaced with an integrated, Web-based information management system. The online system will make reporting more