

The word "RESCINDED" is written in large, bold, red capital letters. To the left of the word is a blue circular logo with a white stylized 'C' or 'O' shape inside. Behind the letters, there is a faint, partially obscured document header from the Federal Reserve System, including the text "Director of the Federal Reserve System" and "Department of the Treasury".

RESCINDED

OCC 1998-17

Subject: Regulations E, DD, M, Z, and B
Date: April 21, 1998

To: Chief Executive Officers and Compliance
Officers of all National Banks, Department and
Division Heads, and all Examining Personnel

Description: Interim and Proposed Rules

This rescission does not change the status of the transmitted document. To determine the current status of the transmitted document, refer to the Code of Federal Regulations, www.occ.gov, or the original issuer of the document.

for Regulations DD, M, Z, and B would permit, depository institutions to deliver by electronic communication disclosures required by the acts and the regulations, if the consumer agrees to such method of delivery.

In addition:

The proposed rule amending Regulation E would reduce the time period for investigating errors involving point-of-sale debit card and foreign transactions. The proposed rule also contains a technical amendment to a model form for error resolution to harmonize it with a 1996 revision to the regulation allowing banks three additional days to notify consumers of the results of their investigation.

The proposed rule amending Regulation DD would implement minor changes to the TISA concerning lobby signs; would eliminate subsequent disclosure requirements for automatically renewable time accounts with terms less than one month; and would repeal the civil liability provisions as of September 30, 2001.

The proposed rule amending Regulation M would make technical amendments that further clarify rules on lease payments, advertisements, rounding calculations, and taxes.

Written comments regarding the proposed rules should be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments must be received by May 15, 1998.

For more information, contact your supervisory office or Carol Workman, compliance specialist, Community and Consumer Policy at (202) 874-4428.

Stephen M. Cross
Deputy Comptroller
Community and Consumer Policy

Related Links

- [Electronic Funds Transfer; Final Rule 63 FR 14527](#)
- [Truth in Savings; Proposed Rule 63 FR 14533](#)
- [Consumer Leasing; Proposed Rule 63 FR 14538](#)
- [Truth in Lending; Proposed Rule 63 FR 14548](#)

- [Equal Credit Opportunity; Proposed Rule 63 FR 14552](#)
- [Electronic Fund Transfers; Proposed Rule 63 FR 14555](#)

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Part III

Federal Reserve System

12 CFR Part 205

Electronic Fund Transfers; Final Rule

12 CFR Part 230 et al.

Truth in Savings, Consumer Leasing, Truth in Lending, Equal Credit Opportunity, Electronic Fund Transfers; Proposed Rules

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FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R-1002]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: The Board is publishing an interim rule amending Regulation E, which implements the Electronic Fund Transfer Act (EFTA). The EFTA establishes certain rights, liabilities, and responsibilities of participants involved in electronic fund transfers (EFTs) to and from consumer asset accounts. Among other things, the act and regulation

require disclosures about the terms and conditions of EFT services, account activity, error resolution, and authorizations or confirmations concerning EFTs. These disclosures must generally be provided in writing. In May 1996, the Board issued a proposed rule permitting financial institutions to satisfy the requirement that certain disclosures and other information be in writing by sending information electronically subject to certain requirements. The interim rule allows depository institutions or other entities subject to the act to deliver by electronic communication any of these disclosures and other information required by the act and regulation, as long as the consumer agrees to such delivery. For purposes of the regulation, an electronic communication is a message transmitted electronically that allows visual text to be displayed on equipment such as a modem-equipped computer. This interim rule permits financial institutions to begin implementing systems that allow for the electronic delivery of EFTA disclosures during consideration of similar proposals under other financial services and fair lending laws, appearing elsewhere in today's Federal Register.

DATES: Interim rule effective March 25, 1998; comments must be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R-1002, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel or Obrea Poindexter, Staff Attorneys, or John Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Diane Jenkins at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 et seq., enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR Part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment plan, or home banking program. The act and regulation contain rules that govern these and other EFTs. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

Depository institutions, service providers, and other entities use electronic communication to offer a wide variety of financial services relating to checking and other consumer asset accounts including: Account inquiries; transaction verifications; request and documentation of fund transfers between accounts; bill payment services; and full account management. Communicating electronically provides a fast, convenient, and less costly means of receiving and delivering information. In offering home banking and other financial services, depository institutions and others have asked whether they satisfy the

requirements of the EFTA and Regulation E by providing or accepting information electronically. In connection with electronic commerce, some service providers would like to obtain the electronic equivalent of a written and signed authorization so that consumers' accounts can be debited on a recurring basis to pay for products or services.

In May 1996, the Board updated Regulation E and the staff commentary under the Board's Regulatory Planning and Review program, which requires regulations to be reviewed and updated periodically. (See 61 FR 19661, May 2, 1996.) During that process and in its review of regulations pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication to deliver information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce compliance costs without adversely affecting consumer protections. Simultaneous with the issuance of Regulation E update, the Board issued a proposed rule permitting financial institutions to satisfy the EFTA requirement that certain disclosures and other information be in writing by sending information electronically in a format that allows the display of text messages in a clear and readily understandable form. The proposal also required that disclosures be provided in a form the consumer may retain, a requirement that an institution could satisfy by providing information that may be printed or downloaded. The proposed rule allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery (61 FR 19696, May 2, 1996).

The Board received approximately 110 comments on the proposal. The majority of comments were submitted by depository institutions and their trade associations. The commenters, including consumer representatives, generally supported the use of electronic communication to deliver information required by the EFTA and Regulation E. Many commenters suggested specific modifications and sought clarification on various aspects of the proposed rule; these comments are addressed below in the section-by-section discussion of the interim rule.

Based on a review of the comments and further analysis, the Board is publishing an interim rule that allows financial institutions to provide Regulation E disclosures electronically; such disclosures remain subject to applicable timing, format, and other requirements of the act and regulation. The interim rule will allow financial institutions to implement systems to provide EFTA information electronically while proposed rules are

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being considered to allow the electronic delivery of disclosures under other laws. The term financial institution is broadly defined in the EFTA to include persons that directly or indirectly hold accounts belonging to consumers or that issue an access device and agree to provide EFT services. In this notice, the term "financial institution" is used in that context.

The interim rule is similar to the proposed rule. The interim rule, however, does not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer has agreed to receive disclosures electronically. The Board believes that most financial institutions will accommodate consumer requests for paper copies when feasible.

Elsewhere in today's Federal Register, the Board is publishing proposed rules similar to the interim rule under Regulation E to address electronic communication under Regulation B (Equal Credit Opportunity), Regulation DD (Truth in Savings), Regulation M (Consumer Leasing), and Regulation Z (Truth in Lending). Previously, the Board published amendments to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) allowing depository institutions to send notices electronically (62 FR 13801, March 18, 1997).

II. Regulatory Revisions

The EFTA and Regulation E require a number of disclosures to be provided to consumers in writing. The requirement that disclosures be in writing has been presumed to require that institutions provide paper documents. However, under many laws that call for information to be in writing, information in electronic form is considered to be ``written.'' Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

Pursuant to its authority under sections 904(a) and (c) of the EFTA, the Board is issuing an interim rule amending Regulation E to permit financial institutions to use electronic communication where the regulation requires that information be provided in writing. The term ``electronic communication'' is limited to a communication in a form that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as a consumer's computer monitor). Communication by telephone voicemail systems does not meet the definition of ``electronic communication'' for purposes of this amendment because it does not have the feature generally associated with a writing--visual text.

Definition

Section 205.4(c)(1) defines electronic communication for purposes of Regulation E. The definition is generally the same as in the May 1996 proposed rule, except that editorial changes have been made in the interim rule to clarify and simplify the definition. The reference in the proposal to equipment ``in the consumer's possession'' has been deleted so as not to preclude application of the rule where, for example, a consumer uses a computer terminal in a public location such as a library or financial institution. The example of a screen phone has been deleted as unnecessary.

Agreements Between Financial Institutions and Consumers

Section 205.4(c)(2) permits financial institutions to send electronic disclosures if the consumer agrees. The interim rule simplifies the wording that was used in the proposed rule. Many commenters on the proposed rule requested that the Board clarify when an agreement between a financial institution and a consumer exists. More specifically, the commenters sought clarification that agreements may be established electronically. There may be various ways that a financial institution and a consumer could agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties is determined by applicable state law. The regulation does not preclude a financial institution and a consumer from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of EFTA disclosures and other information electronically.

Requirement That Financial Institutions ``Send'' Electronic Disclosures to Consumers

The interim rule in Sec.205.4(c)(2), like the proposed rule, provides that disclosures may be ``sent'' to a consumer electronically. This is consistent with existing requirements in Regulation E, which generally specify that disclosures, documentation, and notices be ``mailed,'' ``delivered,'' or ``provided.'' Many commenters on the proposed rule suggested that making electronic disclosures ``available'' to consumers should satisfy the requirement. Commenters believed that consumers would benefit from the ability to obtain information from the financial institution, at any time, if the disclosures are ``available'' at a specified location. Commenters suggested that, alternatively consumers might have to wait for the

institution to send information to a specific location, for example, an e-mail address provided by the consumer.

Generally, the regulation requires the financial institution to deliver the information--typically by mail--to an address designated by the consumer. For a paper communication, a financial institution generally would not satisfy that requirement by making disclosures ``available,'' for example, at the financial institution's office (or other location). (The staff commentary to Regulation E does allow financial institutions to permit, but not require, consumers to pick up their periodic statements at the institution. See comment 9(b)-4 to Sec.205.9.) The Board believes that consumers receiving disclosures by electronic communication should have protections regarding delivery similar to those afforded consumers receiving paper disclosures. Simply posting information on an Internet site without some appropriate notice and instructions about how the consumer may obtain the required information would not satisfy the requirement. Therefore, the interim rule, like the proposal, requires that disclosures be sent (delivered or transmitted) to consumers, but allows the option contained in comment 9(b)-4.

The requirement to send or deliver disclosures to a consumer is satisfied when the institution ensures that the disclosures will be displayed in a timely manner. For example, under Regulation E, initial disclosures must be provided at the time a consumer signs up for an EFT service or before the first transaction. Assume that a consumer uses a personal computer to sign up for a EFT service and consents to the electronic delivery of the initial disclosures. If the disclosures automatically appear on the computer screen before the consumer commits to the service (in accordance with the format and any other requirements of the act and regulation), the institution has satisfied the requirement to send (or deliver or transmit) disclosures to the consumer.

As a practical matter, there may be little distinction between sending or delivering electronic disclosures and making them ``available.'' Financial institutions have flexibility in how they may deliver electronic disclosures to consumers, including, but not limited to, the following examples. They may send disclosures to a consumer-

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designated electronic mail address or they may designate a location on a website where the consumer might enter a personal identification number or other identifier to access required information. In the scenario described above, assume that the consumer signs up for an EFT service, receives the initial disclosures at that time, and agrees to receive all EFTA disclosures electronically. Subsequent disclosures sent to a designated address or placed at a designated location (for example, periodic statements or change-in-terms notices) would generally satisfy the delivery requirements of Sec. 205.4(c)(2).

Electronic communication remains subject to any timing or other applicable requirements under Regulation E. For example, a financial institution that sends a change-in-terms notice required by Sec.205.8 of Regulation E must satisfy the requirement to provide the notice to the consumer at least 21 days in advance of the change. The Board solicits comment on whether further guidance is needed on how to comply with the timing requirements when a notice is posted on an Internet website.

Requirement That Information Be ``Clear and Readily Understandable''

Under the act and regulation, disclosures must be provided to consumers in a clear and readily understandable form. The proposed rule stated that disclosures provided by electronic communication are subject to this standard. Section 205.4(c)(2) of the interim rule retains this requirement, by cross referencing the current regulatory requirement.

Some commenters believed that the requirement would impose a compliance burden if financial institutions had to determine whether

the consumer possesses the proper equipment to ensure that a disclosure provided electronically meets the standard. Some commenters expressed concern that the ``clear and readily understandable'' requirement, coupled with the screen phone example in the supplementary information to the proposed rule, implicitly disapproved of certain types of technologies. Further, some commenters objected to any consideration of the amount of text that may be viewed at any one time (or the screen size of a device) as a factor in determining whether the communication satisfies the requirement.

Under the interim rule, the ``clear and readily understandable'' requirement applies to electronic communication. The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, the disclosures provided by electronic communication must meet the ``clear and readily understandable'' standard. While a financial institution is generally not required to ensure that the consumer has the equipment to read the disclosures, in some circumstances an institution would have the responsibility of making sure the proper equipment is in place. For example, if EFT services are offered through terminals in an institution's lobby, or through kiosks located in public or other places, the institution must ensure that the equipment meets the clear and readily understandable standard for EFTA disclosures that are being provided electronically.

Consumer Ability to Retain Disclosures

Under Regulation E, most disclosures must be provided in a form that the consumer may keep. Section 205.4(c)(2) of the interim rule, like the proposal, applies the same requirement to disclosures provided by electronic communication. Financial institutions satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the consumer. Most commenters agreed with the Board's interpretation. Many commenters urged the Board to clarify that financial institutions are not obligated to monitor an individual consumer's ability to retain the information, or to ascertain whether the consumer has actually retained it.

The requirements or procedures for electronic delivery are similar to the paper delivery requirements, where the financial institution generally must mail or otherwise deliver the communication to the consumer but need not otherwise ensure that the consumer reads or retains it. Thus, financial institutions are generally not required to monitor a consumer's ability to retain the information, nor to take steps to find out whether the consumer has in fact retained it. The Board anticipates that, where appropriate, a financial institution will inform consumers of any special technical specifications for receiving or retaining information before or at the time a consumer agrees to receive information electronically.

Similar to the ``clear and readily understandable'' standard discussed above, in circumstances where the financial institution (or a network in which the institution is a member) controls the equipment to be used for an EFT service--such as ATMs or kiosks in public or other places--the institution does have the responsibility of ensuring retainability. Provided that the delivery requirements are satisfied--for example, that disclosures appear on a screen--methods for fulfilling this retention requirement could include, for example, printers incorporated into terminals or a screen message offering to transmit the disclosure that appears on the screen to the consumer's electronic mail or post office address.

Consumer's Ability to Request a Paper Copy of an Electronic Disclosure

The proposed rule would have required a financial institution to provide, upon request, a paper copy of any disclosure sent by electronic communication. The consumer could obtain a paper copy for up to one year after the disclosure was sent electronically. Many of the commenters did not object to the paper copy requirement, although most recommended that the Board establish a shorter time period for

providing a copy. Some commenters believed that the requirement could diminish their ability to establish electronic accounts and eliminate the potential cost savings of electronic communication.

The interim rule does not require financial institutions to provide a paper copy upon request. In some instances, however, consumers who receive disclosures by electronic communication could experience computer or printer malfunctions. They may be using public electronic terminals that do not have a print or download capability, or they may otherwise need a paper copy of a disclosure on occasion. The Board expects that financial institutions will accommodate a consumer's request for a paper copy, or that they will redeliver disclosures electronically, to the extent that it is feasible to do so.

Paper Confirmation of Electronic Communications

Under the act and regulation, consumers must provide certain information to financial institutions, and institutions have the option of requiring that it be in writing. Regulation E provides that a consumer may stop payment of a preauthorized EFT or allege an error by notifying the institution orally or in writing, and that the institution may require written confirmation of an oral stop-payment order or notice of error.

In the supplementary information to the May 1996 proposed rule, the Board stated its belief that (as in the case of an oral communication) if the consumer sends an electronic communication to the financial institution, the institution could require paper confirmation from the consumer (particularly since the consumer was entitled to a paper copy

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upon request under the proposed rule). The Board requested comment on whether and how the regulation should address this point.

Some financial institutions commented that in accepting electronic communication from a consumer, they may need to require paper confirmations for their own and the consumer's protection. Many commenters stated that there will be situations in which it is important for financial institutions to have the ability to require paper confirmations (for example, because it may be more secure). These commenters requested that the Board allow financial institutions to request paper confirmations for certain communications.

Under the interim rule, financial institutions may request paper confirmations in cases where they can currently require written confirmation--electronic and oral stop-payment notices, and electronic and oral notices of error. The financial institution, however, must clearly identify to the consumer the information subject to paper confirmation and must provide the address where written confirmation must be sent.

Consumers preserve their rights under the act and regulation when they send notices of error electronically. If the consumer notifies the financial institution of an alleged error, the financial institution must begin its investigation promptly upon receiving the electronic notice. The financial institution may not delay its investigation until it has received a paper confirmation. This requirement is the same as the requirement for written confirmation following an oral error notice (see comment 11(c)-2 of the staff commentary).

Consumer Signatures and Similar Authentication

Section 205.10(b) requires that preauthorized EFTs be authorized only by a writing signed or similarly authenticated by the consumer. The phrase ``or similarly authenticated'' was added in the 1996 review of Regulation E. The Board indicated in the Federal Register notice accompanying the amendment that the authentication method should provide the same assurance as a signature in a paper-based system, and cited security codes and digital signatures as examples of authentication devices that might meet the requirements of Sec.205.10(b). Since the 1996 amendment, the Board has received

requests for further guidance on electronic authentication methods. The Board is interested in learning about other ways in which authentication in an electronic environment might take the place of the consumer's signature.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive federal disclosures in paper form. As electronic commerce and electronic banking increase and technological advances take place, obtaining disclosures by electronic communication will likely become more commonplace. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. Thus, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that depository institutions and other institutions subject to the EFTA and Regulation E will provide sufficient details about the delivery of disclosures. The Board plans to closely monitor the development of electronic delivery of EFTA disclosures and other information, and will address compliance or other issues that may arise as appropriate.

III. Form of Comment Letters

Comment letters should refer to Docket No. R-1002 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3\1/2\ inch or 5\1/4\ inch computer diskettes in any IBM-compatible DOS-based format.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act and section 904(a)(2) of the EFTA, the Board's Office of the Secretary has reviewed the interim amendments to Regulation E. Overall, the interim amendments are not expected to have any significant impact on small entities. The interim rule would relieve compliance burden by giving financial institutions flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

V. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in this interim regulation are found in 12 CFR Part 205. This information would be mandatory to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers using certain home-banking services and consumers receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit financial institutions, including small businesses. This regulation applies to all types of depository institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The Federal Reserve has no data on which to estimate the burden the regulatory amendments would impose on state member banks. However, since the amendments provide an alternative method for delivering

disclosures and notices, it is anticipated that the requirements would not be burdensome. The use of electronic communication would likely reduce the paperwork burden of financial institutions. Institutions would be able to use electronic communication to provide disclosures and other information rather than having to print and mail the information in paper form.

The Federal Reserve requests comments from institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this interim regulation is effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0200), Washington, DC 20503, with copies of such comments sent to Mary M. McLaughlin, Federal Reserve Board

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Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Reporting and record keeping requirements.

Pursuant to the authority granted in sections 904(a) and (c) of the Electronic Fund Transfer Act, 15 U.S.C. 1693b(a) and (c), and for the reasons set forth in the preamble, the Board amends Regulation E, 12 CFR part 205, as set forth below:

PART 205--ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693-1693r.

2. Section 205.4 is amended by adding paragraph (c) to read as follows:

Sec. 205.4 General disclosure requirements; jointly offered services.

* * * * *

(c) Electronic communication.--(1) Definition. For purposes of this regulation, the term electronic communication means a message transmitted electronically between a consumer and a financial institution in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) Electronic communication between financial institution and consumer. A financial institution and a consumer may agree to send by electronic communication any information required by this regulation to be in writing. Information sent by electronic communication to a consumer must comply with paragraph (a) of this section and the applicable timing and other requirements contained in the regulation.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 12, 1998.

William W. Wiles,
Secretary of the Board.

[FR Doc. 98-6988 Filed 3-24-98; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R-1003]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

 SUMMARY: The Board is publishing for comment a proposed rule amending Regulation DD which implements the Truth in Savings Act. The proposed rule would allow depository institutions to deliver by electronic communication disclosures required by the act and regulation, if the consumer agrees to such delivery. In addition, the Board is publishing proposed amendments to implement amendments to the Truth in Savings Act enacted as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The law modifies the rules for indoor lobby signs, eliminates subsequent disclosure requirements for automatically renewable time accounts with terms less than one month, and repeals the civil liability provisions as of September 30, 2001.

DATES: Comments must be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R-1003, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel or Obrea Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452-3667 or 452-2412. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA) is implemented by the Board's Regulation DD, issued September 21, 1992 (57 FR 43337) (correction notice at 57 FR 46480, October 9, 1992). Compliance with the regulation became mandatory in June 1993. The act and regulation require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening. The regulation also includes rules about advertising of deposit accounts. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration.

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication for delivery of information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example in May 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) that allowed financial institutions to send notices electronically. (62 FR 13801, March 18, 1997.)

Having considered the comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation DD to allow institutions to provide Regulation DD disclosures electronically; such disclosures would remain subject to any applicable timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed revisions to address electronic communication under Regulations B

(Equal Credit Opportunity), M (Consumer Leasing), and Z (Truth in Lending), published elsewhere in today's Federal Register. In addition, the Board has issued an interim rule under Regulation E also published elsewhere in today's Federal Register, so that financial institutions can implement systems to provide Electronic Fund Transfer Act information electronically.

II. Proposed Regulatory Revisions

Electronic Communication

The TISA and Regulation DD require several disclosures to be provided to consumers in writing. Under Regulation DD, the regulatory requirement that disclosures be in writing has been presumed to require institutions to provide paper documents. However, under many laws that call for information to be in writing, information in electronic form is considered to be ``written.'' Information produced, stored, or communicated by computer is also generally considered to be a writing at least where visual text is involved.

Therefore, pursuant to its authority under Section 269 of the TISA, the Board proposes to amend Regulation DD to permit depository institutions to use electronic communication where the regulation calls for information to be provided in writing. The term ``electronic communication'' is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of ``electronic communication'' for purposes of this regulation because they do not have the feature generally associated with a writing--visual text.

Statutory Amendments

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (1996 Act) contains amendments to the TISA. An amendment to section 266(a)(3) eliminates the requirement that institutions provide disclosures in advance of maturity for automatically renewable (rollover) time accounts with a term of 30 days or less. The Board believes the Congressional intent was to eliminate any subsequent disclosures for monthly time accounts. Accordingly, the proposed amendments to Regulation DD delete Sec. 230.5(c), which requires that institutions disclose (after the account is opened) any changes in account terms for rollover time accounts with a maturity of one month or less. Institutions will continue to provide disclosures when these accounts are opened.

An amendment to section 263(c) of the act expands an exemption from certain advertising provisions for signs on the premises of a depository institution. The proposed amendments to Regulation DD apply this exemption to all signs on the premises of an institution. Section 230.8(e) would be revised to exempt those signs that are inside the premises of the depository institution, including those that face out. Any sign posted outside the depository institution would remain

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covered by the advertising provisions unless the sign is exempt by some other provision (such as the electronic media exemption). The 1996 Act repeals the TISA's civil liability provisions, effective September 30, 2001. This statutory amendment does not require a regulatory revision, as the regulation generally does not address civil liability.

III. Section-by-Section Analysis

Section 230.3 General Disclosure Requirements

Section 230.3(a) would be revised to address electronic communication. ``Electronic communication'' is a visual text message electronically transmitted between a depository institution and a consumer's home computer or other electronic device used by a consumer.

Agreements Between Institutions and Consumers

Section 230.3(a)(2) would permit depository institutions to send electronic disclosures if the consumer agrees. There may be various ways that a financial institution and a consumer could agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be determined by applicable state law. The regulation would not preclude a depository institution and a consumer from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of TISA disclosures and other information electronically.

Delivery Requirements for Electronic Communication

Regulation DD provides that an institution must, for example, ``provide'' or ``deliver'' information to a consumer. Generally, the delivery requirement anticipates that a depository institution will deliver the information--typically by mail--to an address designated by the consumer. For a paper communication, a depository institution would not satisfy that requirement by making disclosures ``available'' to

consumers, for example, at a financial institution's office (or other location). The Board believes that consumers receiving disclosures by electronic communication should have protections regarding delivery similar to those afforded consumers receiving disclosures in paper form. Simply posting information on an Internet site without some appropriate notice and instructions about how the consumer may obtain the required information would not satisfy the requirement.

The requirement to send or deliver disclosures to a consumer would be satisfied if the institution ensures that the disclosures will be displayed in a timely manner. For example, under Regulation DD, account disclosures must be provided before the consumer opens an account or a service is provided, whichever is earlier. Assume that a consumer uses a personal computer to open an account and consents to the electronic delivery of account disclosures. If the disclosures automatically appear on the computer screen before the account is opened or the service is provided (in accordance with the format, timing, and any other requirements of the act and regulation), the institution would satisfy the requirement to send (or deliver or transmit) disclosures to the consumer.

As a practical matter, there may be little distinction between sending or delivering electronic disclosures and making them ``available.'' Depository institutions have flexibility in how they deliver electronic disclosures to consumers including, but not limited to, the following examples. They may send disclosures to a consumer-designated electronic mail address, or they may designate a location on a website where the consumer might enter a personal identification number or other identifier to access required information. If a consumer opens an account, receives the account disclosures at that time, and agrees to receive all Regulation DD disclosures electronically, subsequent disclosures, such as periodic statements or change-in-terms notices, sent (or delivered) to the designated address or placed at a designated location would generally satisfy the delivery requirements of the regulation.

Electronic communication would remain subject to any timing or other applicable requirements under Regulation DD. For example, a depository institution that sends a change-in-terms notice required by Sec. 230.4(a) of Regulation DD must satisfy the requirement to provide the notice to a consumer at least 30 days in advance of the change. The Board solicits comment on whether further guidance is needed on how to comply with the timing requirements when a notice is posted on an Internet website.

Timing of Providing Account Opening Disclosures

Account opening disclosures, required under Sec. 230.4(a), set forth the terms and conditions of the account. These disclosures inform the consumers of the types and amount of any fees that may be imposed and the interest rate and annual percentage yield (APY) that will be paid on the account. Section 230.4(a)(1) requires that account disclosures be provided before an account is opened or a service is provided, whichever is earlier.

Section 266(b) of the TISA provides that if the consumer is not present at the institution when an initial account is accepted (and the disclosures have not been furnished previously) the institution shall mail or deliver the disclosures no later than ten days after the account is opened or the service is provided. The rationale underlying the ten-day exception is that, in some instances (such as when an account is opened by telephone), the institution cannot provide written disclosures before an account is opened. Because this proposal would permit disclosures to be provided electronically, the same difficulty does not exist if an account is opened electronically. Thus, the Board believes that this ten-day exception should not apply. One major purpose of the TISA is to require clear and uniform disclosure so that consumers can make meaningful comparisons of deposit accounts offered by financial institutions before opening an account. The Board believes that permitting a ten-day delay would seriously diminish the consumer's ability to compare account terms and, therefore, hinder an explicit purpose of the TISA. Thus, the proposed rule requires that account opening disclosures be given before the account is opened or a service is provided, when an account is opened using electronic communication.

Requirement That Information be ``Clear and Conspicuous''

Section 230.3(a) of Regulation DD requires depository institutions to present required information ``clearly and conspicuously.'' Under the proposed rule, the ``clear and conspicuous'' requirement applies to electronic communication. The Board does not intend to discourage or encourage specific types of technologies. Regardless of technology, however, the disclosures provided by electronic communication must meet the ``clear and conspicuous'' standard. While a depository institution is generally not required to ensure that the consumer has the equipment to read the disclosures, in some circumstances institutions would have the responsibility of making sure the proper equipment is in place. For example, if financial services are offered through terminals in an institution's premises, or through kiosks located in public or other places (such as grocery stores), the

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institution must ensure that the equipment meets the clear and conspicuous standard for TISA disclosures that are being provided electronically.

Consumer Ability to Retain Disclosures

Section 230.3(a) of Regulation DD requires that written disclosures be in a form the consumer may keep. This requirement would apply to disclosures provided by electronic communication. Depository institutions would satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the consumer. The requirements for electronic delivery are similar to the current paper requirements, where depository institutions generally must mail or deliver the information to the consumer but need not ensure that the consumer reads or retains it. Thus, depository institutions would not be required to monitor an individual consumer's ability to retain the information, nor to take steps to find out whether the consumer has in fact retained it. The Board anticipates that a depository institution would inform the consumer of any special technical specifications for receiving or retaining information before or at the time a consumer agrees to receive information electronically.

As in the case of the ``clear and conspicuous'' standard discussed above, in circumstances where the financial institution (or a network in which the institution is a member) controls the equipment to be used for a service--such as terminals in institution lobbies or kiosks in shopping centers--the institution would have the responsibility of ensuring retainability. Methods for fulfilling this requirement could include, for example, printers incorporated into terminals or a screen message offering to transmit the disclosure to the consumer's electronic mail or post office or other address provided that the delivery requirements (discussed above) are satisfied.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive federal disclosures in paper form. As electronic commerce and electronic banking increase and technological advances take place, obtaining disclosures by electronic communication will likely become more commonplace. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. In light of this evolution, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that depository institutions and other institutions subject to Regulation DD will provide sufficient details about the delivery of disclosures. The Board plans to closely monitor the development of electronic delivery of TISA disclosures and other information, and will address compliance or other issues that may arise as appropriate.

Section 230.5 Subsequent Disclosures

5(c) Notice for Time Accounts One Month or Less That Renew Automatically

Section 266(a)(3) of the TISA requires institutions to provide certain disclosures for rollover time accounts at least 30 days before maturity. In implementing this provision in 1992, the Board looked to the legislative history of the TISA, which suggested special rules for short-term time accounts. The Board determined that the purposes of the legislation would not be served by requiring advance disclosures for rollover time accounts with maturities of one month or less. Regulation DD therefore did not require disclosures to be provided in advance of maturity for such time accounts. However, under Sec. 230.5(c) of the regulation, if a term disclosed when the account was opened is changed at renewal, institutions were required to send a notice describing the change within a reasonable time after the renewal of the account.

The 1996 Act eliminates the requirement that institutions provide disclosures in advance of maturity for automatically renewable time accounts with a term of 30 days or less. (Institutions will continue to provide disclosures when these accounts are opened.) Accordingly, the Board proposes to delete Sec. 230.5(c) and the corresponding provision in the official staff commentary, comment 5(c)-1.

The statute eliminates these disclosures for rollover time accounts with a maturity of 30 days or less. Technically, the statute could be read to require subsequent disclosures for rollover time accounts with a maturity of 31 days. For ease of compliance, the Board proposes to eliminate subsequent disclosures for rollover time accounts with a maturity of ``one month or less.'' This approach would not require subsequent disclosures for accounts with a maturity of 31 days and is consistent with other provisions of Regulation DD that interpret one month to include 31 days.

Section 230.8 Advertising

8(e) Exemption for Certain Advertisements

8(e)(2) Indoor Signs

Section 263(a) of the TISA provides that a reference to a specific interest rate, yield, or rate of earnings in an advertisement triggers a duty to state certain additional information, including the annual percentage yield. In 1994, the Congress amended section 263(c) of the advertising rules to provide that if a rate is displayed on a sign (including a rate board) designed to be viewed only from the interior

of an institution, the disclosure requirements of section 263 do not apply.

A further amendment to section 263(c) of the TISA contained in the 1996 Act expands the exemption for signs on the premises of the depository institution. Under the Board's proposal, all signs inside the premises of an institution would be exempt from certain advertising disclosures (including signs that face outdoors and that are intended to be viewed from outside the premises). The proposal would delete the reference in Sec. 230.8(e) to signs that face outside and the corresponding provision in the official staff commentary, comment 8(e)(2)(i)2. Any sign posted outside a depository institution remains covered by the advertising provisions unless the sign qualifies for some other exemption, such as the exemption for broadcast or electronic media.

Section 230.8(e) of Regulation DD exempts advertisements made through broadcast or electronic media from several of the mandatory advertising disclosures. Questions have arisen about whether the limited exception for broadcast media applies to computer or other advertisements, such as those posted on the Internet. The Board believes that such advertisements are not exempt under the broadcast or electronic media provision. The rationale for broadcast and electronic media exemptions is that these media have time or space constraints that make it extremely burdensome to provide the required disclosures. Advertisements posted on the Internet generally do not have the same time and space constraints. Such advertisements would remain subject to the general advertising rules and, therefore, must comply with the requirements of Secs. 230.8(a), (b), (c), and (d) of this section.

Appendix B to Part 230--Model Clauses and Sample Forms

The Board is not proposing any amendments to the model forms and

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clauses in Appendix B. The Board believes that financial institutions can adapt the current forms and clauses in Appendix B for electronic use.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R-1003 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 1/2 inch or 5 1/4 inch computer diskettes in any IBM-compatible DOS-based format.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's office of the Secretary has reviewed the proposed amendments to Regulation DD. Overall, the proposed amendments are not expected to have any significant impact on small entities. The proposed rule would relieve compliance burden. The proposed rule would also give depository institutions flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the change in the burden that would be the result of the proposed acceptability of electronic communications. Depository institutions would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to print and mail the information in paper form. The use of electronic communication in home banking and financial services may reduce the paperwork burden on creditors and financial institutions or merely may reduce the dollar cost.

The Federal Reserve requests comments from depository institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this rule is effective. Comments are invited on: (a) whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0271), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics,

Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found throughout 12 CFR part 230 and in Appendices A and B. This information is mandatory (12 U.S.C. 4308) to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, annual percentage yield, interest rate, and other account terms whenever a consumer requests the information and before an account is opened. The regulation also requires that fees and other information be provided on any periodic statement the institution sends to the consumer. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Records, required to evidence compliance with the regulation, must be retained for twenty-four months.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation DD (OMB No. 7100-0271) for three years. The current estimated total annual burden for this information collection is 1,478,395 hours, as shown in the top half of the table below. These amounts reflect the burden estimate of the Federal Reserve System for the 996 state member banks under its supervision. This regulation applies to all types of depository institutions (except credit unions), not just to state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve only accounts for the burden of the paperwork associated with state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

Both the proposed rules for indoor lobby signs and elimination of subsequent disclosure requirements for automatically renewable time accounts with terms less than one month would decrease the frequency of response slightly; these reductions are shown in the bottom half of the table. It is estimated that the total amount of annual burden after these two proposed revisions would be 1,476,071 hours. There is estimated to be no associated capital or start up cost. The Federal Reserve has not estimated there to be any annual cost burden over the annual hour burden.

				Estimated
Number of Estimated annual respondents annual Estimated response time burden frequency hours				

Current				
Complete account disclosures (Upon 996 300 5 minutes 24,900 request and new accounts).				
Subsequent notices:				
Change in terms.....	996	1,130	1 minute	18,757
Prematurity notices.....	996	1,095	1 minute	18,177
Periodic statements.....	996	84,615	1 minute	1,404,609
Advertising.....	996	12	1 hour	11,952
Total.....				----- 1,478,395
Proposed				
Complete account disclosures (Upon 996 300 5 minutes 24,900 request and new accounts).				
Subsequent notices:				
Change in terms.....	996	1,130	1 minute	18,757
[[Page 14537]]				
Prematurity notices.....	996	1,015	1 minute	16,849
Periodic statements.....	996	84,615	1 minute	1,404,609
Advertising.....	996	11	1 hour	10,956
Total.....				----- 1,476,071 =====
Change.....				-2,324

The initial disclosures concerning consumers' rights and responsibilities for error resolution are available to the public. Transaction- or account-specific disclosures are not publicly available and are confidential between the depository institution and the consumer. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 552(b)). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0271.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation DD. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

For the reasons set forth in the preamble, the Board proposes to amend, 12 CFR part230, as set forth below:

PART 230--TRUTH IN SAVINGS (REGULATION DD)

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

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

2. In Sec. 230.3, the following amendments would be made:

a. By designating the text of paragraph (a) as paragraph (a)(1) and adding a heading to newly designated paragraph (a)(1);

b. A new paragraph (a)(2) would be added.

The addition and revisions would read as follows:

Sec. 230.3 General disclosure requirements.

(a) Form.--&rt-triang>(1) General requirements.<lf-triang> * * *
<rt-triang>(2) Electronic communication<lf-triang>. The term electronic communication means a message transmitted electronically between a consumer and a depository institution in a format that allows visual text to be displayed on equipment such as a personal computer monitor. A depository institution and a consumer may agree to send by electronic communication any information required by Secs. 230.4 through 230.6 of this part. Information sent by electronic communication to a consumer must comply with paragraph (a)(1) of this section and any applicable timing requirements contained in this part. <lf-triang>
* * * * *

3. Section 230.5 would be amended by removing paragraph (c) and redesignating paragraph (d) as new paragraph (c):

Sec. 230.5 Subsequent disclosures.

* * * * *

[(c) Notice for time accounts one month or less that renew automatically. For time accounts with a maturity one month or less that renew automatically at maturity, institutions shall disclose any difference in the terms of the new account as compared to the terms required to be disclosed under Sec. 230.4(b) of this part for the existing account, other than a change in the interest rate and corresponding change in the annual percentage yield. The notice shall be mailed or delivered within a reasonable time after the renewal.]

4. Section 230.8 would be amended by revising paragraph (e)(2)(i) to read as follows:

Sec. 230.8 Advertising.

* * * * *

(e) Exemption for certain advertisements. * * *

(2) Indoor signs. (i) Signs inside the premises of a depository institution (or the premises of a 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 consumer only from outside the premises].
* * * * *

5. In Supplement I to Part 230, in Sec. 230.5--Subsequent disclosures, under paragraph (c), paragraph 1. would be removed:

Supplement I to Part 230--Official Staff Interpretations

* * * * *

Sec. 230.5 Subsequent disclosures

* * * * *

(c) Notice for time accounts one month or less that renew automatically

[1. Providing disclosures within a reasonable time. Generally, 10 calendar days after an account renews is a reasonable time for providing disclosures. For time accounts shorter than 10 days, disclosures should be given prior to the next renewal date. For example, if a time account automatically renews every 7 days, disclosures about an account that renews on Wednesday, December 7, 1994, should be given prior to Wednesday, December 14.]
* * * * *

6. In Supplement I to Part 230, in Sec. 230.8--Advertising, under paragraph (e)(2)(i), paragraph 2. would be removed.

* * * * *

Sec. 230.8 Advertising

* * * * *

(e)(2) Indoor signs.

(e)(2)(i)

* * * * *

[2. Consumers outside the premises. Advertisements may be ``indoor signs'' even though they may be viewed by consumers from outside. An example is a banner, in an institution's glass-enclosed branch office, that is located behind a teller facing customers but is readable by passersby.]

* * * * *

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By order of the Board of Governors of the Federal Reserve System, March 12, 1998.
William W. Wiles,
Secretary of the Board.
[FR Doc. 98-6989 Filed 3-24-98; 8:45 am]
BILLING CODE 6210-01-P

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[Federal Register: March 25, 1998 (Volume 63, Number 57)]
[Proposed Rules]
[Page 14538-14548]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
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FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R-1004]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending Regulation M, which implements the Consumer Leasing Act. The act requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The proposed rule would allow lessors to deliver by electronic communication the disclosures required by the act and regulation, if the consumer agrees to such delivery. For purposes of the regulation, an electronic communication is a message transmitted electronically that allows visual text to be displayed on equipment such as a modem-equipped computer. In addition, the proposal contains several technical amendments that would be made to the regulation and commentary.

DATES: Comments should be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R-1004, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Orea Poindexter or Kyung Cho-Miller, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, Diane Jenkins at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667-1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 et seq. The Board's Regulation M (12 CFR 213) implements the act. The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed \$25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act.

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication to deliver information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example, in May 1996 the Board proposed to amend Regulation E (Electronic Fund

Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) that allowed financial institutions to send notices electronically. (62 FR 13801, March 18, 1997.)

Having considered the comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation M to allow lessors to provide Regulation M disclosures electronically. Any electronic communication would remain subject to the timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed rules to address electronic communication under Regulations DD (Truth in Savings), B (Equal Credit Opportunity), and Z (Truth in Lending), published elsewhere in today's Federal Register. In addition, the Board has issued an interim rule under Regulation E also published elsewhere in today's Federal Register so that financial institutions can implement systems to provide Electronic Fund Transfer Act disclosures electronically.

II. Proposed Regulatory Revisions

The CLA and Regulation M require disclosures to be provided to consumers in writing. Under Regulation M, the requirement that disclosures be in writing has been presumed to require that lessors provide paper documents. However, under many laws that call for information to be in writing, information in electronic form is considered to be ``written.'' Information produced, stored, or communicated by computer is also generally considered to be a writing at least where text is involved.

Pursuant to its authority under section 187 of the CLA, the Board proposes to amend Regulation M to permit lessors to use electronic communication where the regulation calls for information to be provided in writing. Few lessors currently consummate lease agreements electronically; however, as standards are developed for establishing legal agreements by electronic communication, more lease contracts may be entered into by that means.

The term ``electronic communication'' is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of ``electronic communication'' for purposes of this regulation because they do not have the feature generally associated with a writing--visual text.

Section 213.3--General Disclosure Requirements

3(a) General requirements

Definition

Section 213.3(a) would be revised to address electronic communications under Sec. 213.3(a)(5). Electronic communication is a visual text message electronically transmitted between a lessor and a consumer's home computer or other electronic device used by a consumer.

Agreements Between Lessors and Consumers

Section 213.3(a)(5) permits lessors to send electronic disclosures if the consumer agrees. There may be various ways that a lessor and a consumer could agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be

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determined by applicable state law. The regulation would not preclude a lessor and a consumer from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of CLA and Regulation M disclosures electronically.

Delivery Requirements for Electronic Communication

Regulation M provides that a lessor make disclosures to a consumer. The requirement is satisfied when the institution ensures that the disclosures will be presented to the consumer in a timely manner. Electronic disclosures remain subject to the format, timing, and other applicable requirements under Regulation M.

The ``Clear and Conspicuous'' Standard

Regulation M requires lessors to present required information ``clearly and conspicuously'' in writing. The ``clear and conspicuous''

requirement applies to electronic disclosures. The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, the disclosures provided by electronic communication must meet the ``clear and conspicuous'' standard. A lessor must satisfy this requirement, but is generally not required to ensure that the consumer has the equipment to read the disclosures.

Consumer Ability to Retain Disclosures

Regulation M requires that written disclosures be in a form the consumer may keep. This requirement applies to disclosures provided by electronic communication. Lessors satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the consumer. Thus, lessors would not be required to monitor an individual consumer's ability to retain the information, nor to take steps to find out whether the consumer has in fact retained it. The Board anticipates that, where appropriate, a lessor will inform consumers of any special technical specifications for receiving or retaining information before or at the time a consumer agrees to receive information electronically. Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive disclosures in paper form. As electronic commerce increases and technology advances take place, obtaining disclosures by electronic communication may likely become more commonplace. Compliance and other issues will arise that suggest further interpretations. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. Thus, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that lessors will provide sufficient details about the delivery of disclosures electronically. The Board plans to closely monitor the development of the electronic delivery of Regulation M disclosures, and will address compliance or other issues that may arise as appropriate. Section 213.4--Content of Disclosures

4(f)(8) Lease term

In September 1996, Regulation M was revised to require, among other things, that lessors show consumers a mathematical progression of how a scheduled payment is derived in a motor vehicle lease. In deriving a scheduled payment, the ``total of base periodic payments'' is divided by the number of lease payments. The caption in the regulation and on the model forms refers to the number of lease payments as the ``lease term.''

For leases with monthly payments, typically the lease term and the number of payments are the same. For leases with other payment arrangements, the number of payments and the lease term typically are not the same, for example, single-payment leases. In reflecting the consumer's legal obligation to make one payment under a single-payment lease, the figure disclosed under Sec. 213.4(f)(8) should be one, not the lease term of 24 months or 36 months, for example.

To avoid confusion, references to the ``lease term'' in Sec. 213.4(f)(8) would be changed to ``lease payments'' with corresponding changes to the model forms in appendix A. Despite the proposed revision to the model forms, lessors would continue to use the existing form until the supply is exhausted. If properly completed, those forms comply with the requirements of the act and regulation, protecting lessors from civil liability under sections 130 of the Truth in Lending Act and 185 of the Consumer Leasing Act.

The disclosure of the lease term is not a required disclosure. If they choose, however, lessors may disclose the lease term among the segregated disclosures along with the number of lease payments, but should note that the calculation under Sec. 213.4(f)(8) calls for the number of payments.

Section 213.7--Advertising

In April 1997, the Board revised Regulation M to implement amendments to the act contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which streamlined the advertising disclosures for lease transactions. (62 FR 15364, April 1, 1997) Under the act, certain terms in an advertisement will trigger the disclosure of additional information. One of them is a statement in a lease advertisement that no initial payment is required, which triggers the disclosure of additional information. This ``triggering'' term was inadvertently omitted from Sec. 213.7(d)(1)(ii), and is being added.

Appendix A--Model Forms

The Board is proposing several technical changes to the model forms in appendix A. The model forms for open-and closed-end leases in appendix A-1 and A-2 would be revised to change the reference under the payment calculation from ``Lease term. The number of months in your lease.'' to ``Lease payments. The number of payments in your lease.'' Page 2 of the open-end model form would be revised by adding ``value'' after ``actual'' in the ``end of term liability'' disclosure (a)(3), line 3. Model form A-3 for a furniture lease would be revised by adding ``or delivery'' after the heading ``Amount due at lease signing.''

III. Proposed Commentary Provisions

Section 213.4--Content of Disclosures

4(f) Payment Calculation

4(f)(7) Total of Base Periodic Payments.

For motor vehicle leases, lessors are required under Sec. 213.4(f) to provide a mathematical progression of how scheduled lease payments are derived. Some lessors are concerned about exposure to civil liability because if one divides the total of the base periodic payments disclosed under Sec. 213.4(f)(7) by the number of payments in the lease disclosed under Sec. 213.4(f)(8) and then multiplies the base periodic payment disclosed under Sec. 213.4(f)(9) by the number of payments in the lease disclosed under Sec. 213.4(f)(8), the result is different because of rounding.

This anomaly may be avoided by making adjustments to the rent charge. However, some lessors have requested a small tolerance for the total of base periodic payments disclosure. They believe that a tolerance of \$1 would be sufficient to remedy differences due to rounding.

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In response to issues concerning rounding, proposed comment 4(f)(7)-1 would be added to clarify that if the periodic payment calculation under Sec. 213.4(f) is calculated correctly, the disclosed total of base periodic payments is correct for disclosure purposes even if it varies from the base periodic payments multiplied by the number of payments in the lease, when the difference is solely due to rounding.

4(n) Fees and Taxes

Several examples are provided in comment 4(n)-1 to illustrate when taxes are disclosed under this section. The treatment of taxes paid as a part of regularly scheduled payments is unclear. This comment would be revised to clarify that taxes that are part of the regularly scheduled payments are required to be disclosed under Sec. 213.4(n).

Appendix A--Model Forms

Comment 2 to Appendix A provides examples of acceptable changes that may be made to the model forms. At the request of lessors, the comment would be revised to clarify that inapplicable disclosures may be deleted.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R-1004 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3\1/2\ inch or 5\1/4\ inch computer diskettes in any IBM-compatible DOS-based format.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's office of the Secretary has reviewed the proposed amendments to Regulation M. Overall, the proposed amendments are not expected to have any significant impact on small entities. The proposed

rule would relieve compliance burden. The proposed rule would also give lessors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the burden the proposed revised requirements would impose on state member banks. Lessors would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to make the information available in paper form. The use of electronic communication in home banking and financial services may reduce the paperwork burden of lessors or merely may reduce the dollar cost.

The Federal Reserve requests comments from lessors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this rule is effective. Comments are invited on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0202), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed revised regulation are found in 12 CFR 213.3, 213.4, 213.5, 213.7, 213.8, and appendix A. This information is mandatory (15 U.S.C. 1667 et seq.) to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers using certain home-banking services and consumers receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit, including small businesses. Records, required to evidence compliance with the regulation, must be retained for twenty-four months.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation M (OMB No. 7100-0202) for three years. The current estimated total annual burden for this information collection is 11,179 hours, as shown in the table below. The proposed clarifications of some leasing terms are not estimated to affect the paperwork burden. These amounts reflect the burden estimate of the Federal Reserve System for the state member banks under its supervision, of which relatively few engage in consumer leasing. This regulation applies to all types of lessors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

	Number of respondents	Estimated annual frequency	Estimated response time	Estimated annual burden hours
Disclosures.....	310	120	18 minutes	11,160
Advertising.....	15	3	25 minutes	19
Total.....				11,179

Consumer lease information in or referred to by advertisements is available to the public. Disclosures of the costs, liabilities, and terms of consumer lease transactions relating to specific leases are not publicly available. Because the Federal Reserve does not collect any information, no issue of confidentiality under the Freedom of

Information Act normally arises. However, the information may be protected from disclosure under the

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exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)). An agency may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation M is 7100-0202.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation M. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation M, 12 CFR part 213, as set forth below:

PART 213--CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 would continue to read as follows:

Authority: 15 U.S.C. 1604.

2. Section 213.3 would be amended by adding a new paragraph (a)(5) to read as follows:

Sec. 213.3 General disclosure requirements.

(a) General requirements. * * *

&rt-triang>(5) Electronic communication. For purposes of this regulation, the term electronic communication means a message transmitted electronically between a consumer and a lessor in a format that allows visual text to be displayed on equipment such as a personal computer monitor. A lessor and a consumer may agree to send by electronic communication the disclosures required by this regulation to be provided in writing. Any electronic communication must comply with paragraph (a) of this section.<lf-triang>

* * * * *

3. Section 213.4 would be amended by revising paragraph (f)(8) to read as follows:

Sec. 213.4 Content of disclosures.

* * * * *

(f) Payment calculation. * * *

(8) [Lease term. The lease term with a description such as ``the number of periods of repayment in your lease.``] &rt-triang>Lease payments. The lease payments with a description such as ``the number of payments in your lease.``<lf-triang>

* * * * *

4. Section 213.7 would be amended by revising paragraph (d)(1)(ii) to read as follows:

Sec. 213.7 Advertising.

* * * * *

(d) Advertisement of terms that require additional disclosure.--(1) Triggering terms. * * *

(ii) A statement of any capitalized cost reduction or other payment &rt-triang>or that no payment is<lf-triang> required &rt-triang>, <lf-triang>prior to or at consummation &rt-triang>or by delivery, if delivery occurs after consummation.<lf-triang> [or that no payment is required.]

* * * * *

5. Appendix A to part 213 would be amended by revising Appendix A-

1, Appendix A-2, and Appendix A-3 to read as follows:

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[GRAPHIC] [TIFF OMITTED] TP25MR98.000

[[Page 14543]]

[GRAPHIC] [TIFF OMITTED] TP25MR98.001

[[Page 14544]]

[GRAPHIC] [TIFF OMITTED] TP25MR98.002

[[Page 14545]]

[GRAPHIC] [TIFF OMITTED] TP25MR98.003

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[GRAPHIC] [TIFF OMITTED] TP25MR98.004

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[GRAPHIC] [TIFF OMITTED] TP25MR98.005

BILLING CODE 6210-01-C

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6. In Supplement I to Part 213--Official Staff Commentary to Regulation M, under Section 213.4--Content of Disclosures, the following amendments would be made:

- a. A new paragraph heading ``4(f)(7) Total of base periodic payments'' would be added in numerical order and a new paragraph 1. would be added immediately below the new heading.
- b. Under (4)(n) Fees and taxes, paragraph 1.ii. would be revised. The addition and revision would read as follows:

Supplement I to Part 213--Official Staff Commentary to Regulation M

* * * * *

Section 213.4--Content of Disclosures

* * * * *

<rt-triang>4(f)(7) Total of base periodic payments.

1. Accuracy of disclosure. Lessors are deemed to be in compliance with Sec. 213.4(f)(7) of the regulation if due to rounding in a manner the lessor arrives at the base periodic payment, the amount disclosed under Sec. 213.4(f)(7), the total of base periodic payments, differs from the base periodic payment disclosed under Sec. 213.4(f)(9), multiplied by the number of payments under the lease disclosed under Sec. 213.4(f)(8).<lf-triang>

* * * * *

4(n) Fees and taxes.

- 1. Treatment of certain taxes. * * *
- ii. Taxes that are part of regularly scheduled payments are reflected in the disclosure under Secs. 213.4(c) <rt-triang>and 213.4(n)<lf-triang> and itemized under Sec. 213.4(f)(10).

* * * * *

7. In Supplement I to Part 213, under Appendix A--Model Forms,

paragraph 2.v. would be revised as follows:

* * * * *

Appendix A--Model Forms

* * * * *

2. Examples of acceptable changes. * * *

v. Deleting <rt-triang>or blocking out<lf-triang> inapplicable disclosures [by blocking out], filling in ``N/A'' (not applicable) or ``0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items (this should facilitate use of multipurpose standard forms[.]<rt-triang>.<lf-triang>

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 12, 1998.

William W. Wiles,
Secretary of the Board.

[FR Doc. 98-6990 Filed 3-24-98; 8:45 am]

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[Proposed Rules]
[Page 14548-14552]
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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1005]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending Regulation Z, which implements the Truth in Lending Act. The proposal would permit creditors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the consumer agrees to such delivery.

DATES: Comments must be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R-1005, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel, Obrea Poindexter, or Pamela Morris Blumenthal, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 et seq., is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwellings. The act is implemented by the Board's Regulation Z (12 CFR Part 226).

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication for delivery of information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example in May 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) that allowed financial institutions to send notices

electronically. (62 FR 13801, March 18, 1997.)

Having considered the comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation Z to allow creditors to provide Regulation Z disclosures electronically; such disclosures would remain subject to any applicable timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed revisions to address electronic communication under Regulations DD (Truth in Savings), B (Equal Credit Opportunity), and M (Consumer Leasing), published elsewhere in today's Federal Register. In addition, the Board has issued an interim rule under Regulation E, also published elsewhere in today's Federal Register so that financial institutions can implement systems to provide Electronic Fund Transfer Act disclosures electronically.

II. Proposed Regulatory Revisions

The TILA and Regulation Z require several disclosures to be provided to consumers in writing. The requirement that disclosures be in writing has been presumed to require that creditors provide paper documents. However, under many laws that call for information to be in writing, information in electronic form is considered to be ``written.'' Information produced, stored, or communicated by computer is also generally considered to

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be a writing at least where visual text is involved.

Therefore, pursuant to its authority under section 105 of the TILA, the Board proposes to amend Regulation Z to permit creditors to use electronic communication where the regulation calls for information to be provided in writing. The term ``electronic communication'' is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of ``electronic communication'' for purposes of this regulation because they do not have the feature generally associated with a writing--visual text.

Section 226.2(a)(27) would be revised to include the definition of electronic communication for purposes of Regulation Z. Under the definition, electronic communication is a visual text message electronically transmitted between a creditor and a consumer's home computer or other electronic device used by a consumer. Sections 226.5, 226.17 and 226.31 would be revised to address electronic communication. These sections contain general disclosure requirements for open-end credit, closed-end credit, and certain home secured loans referred to as ``HOEPA loans.''

Agreements Between Creditors and Consumers

Sections 226.5(a)(5), 226.17(a)(3), and 226.31(b)(2) would permit creditors to send electronic disclosures if the consumer agrees. There may be various ways that a creditor and a consumer could agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be determined by applicable state law. The regulation would not preclude a creditor and a consumer from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of TILA disclosures and other information electronically.

Delivery Requirements for Electronic Communication

Regulation Z provides that an institution ``furnish,'' ``provide,'' ``send,'' ``deliver,'' or ``mail'' information to a consumer. Generally, the delivery requirement anticipates that a creditor will deliver the information--typically by mail--to an address designated by the consumer. For a paper communication, a creditor would not satisfy that requirement by making disclosures ``available'' to consumers, for example, at a creditor's office or other location. The Board believes that consumers receiving disclosures by electronic communication should have protections regarding delivery similar to those afforded consumers receiving disclosures in paper form. Simply posting information on an Internet site without some appropriate notice and instructions about how the consumer may obtain the required information would not satisfy the requirement.

The requirement to send disclosures to a consumer would be satisfied when the institution ensures that the disclosures will be displayed in a timely manner. For example, under Regulation Z, open-end credit initial disclosures generally must be provided before the first transaction under the plan. Assume that a consumer uses a personal computer to apply for a plan and consents to the electronic delivery of the initial disclosures. If the disclosures automatically appear on the computer screen before the consumer commits to the plan (in accordance with the format, timing rules and any other requirements of the act and regulation), the creditor would satisfy the requirement to provide (deliver or transmit) disclosures to the consumer.

As a practical matter, there may be little distinction between sending or delivering electronic disclosures and making them ``available.'' Creditors have flexibility in how they may deliver electronic disclosures to consumers, including, but not limited to, the following examples. They may send disclosures to a consumer-designated electronic mail address or they may designate a location on a website where the consumer enters a personal identification number or other identifier to access required information. In the scenario described above, assume that the consumer applies for a credit plan, receives the initial disclosures at that time, and agrees to receive all Regulation Z disclosures electronically. Subsequent disclosures sent to the designated address or placed at a designated location (for example, periodic statements or change-in-terms notices) would satisfy the delivery requirements of the regulation.

Electronic communication would remain subject to any timing or other applicable requirements under Regulation Z. For example, an electronic change in terms notice required by Sec. 226.9(c) of Regulation Z must still be provided at least fifteen days in advance of the change. The Board solicits comment on whether further guidance is needed on how to comply with the timing requirements when a notice is posted on an Internet website.

Section 226.5a--Credit and Charge Card Applications and Solicitations

The act and regulation require credit and charge card issuers to provide credit disclosures in certain applications and solicitations to open credit and charge card accounts. Format and content requirements differ for applications or solicitations sent in direct mail campaigns and for those made available to the general public such as in ``take-ones'' and catalogs or magazines. Disclosures accompanying direct mail applications and solicitations must be presented in a tabular format. Disclosures in a take-one also may be presented in a table with the same content as for direct mail, but the act and regulation permit alternatives as to format and content. The APR disclosed in a direct mail solicitation must be accurate within 60 days of mailing; in a take-one, within 30 days of printing.

Consumers could obtain an electronically sent credit or charge card application in much the same way as either opening a direct-mail piece or browsing through a magazine. Under the proposal, if a card issuer sends an application or solicitation to a consumer by electronic means that alert the consumer that the application or solicitation has arrived, such as electronic mail, the card issuer would follow the direct-mail rules under Sec. 226.5a. If an issuer merely makes an application or solicitation publicly available, such as by posting it on an Internet site, the issuer would follow the ``take-one'' rules. The Board believes that in the context of electronic communications, ``printing'' is the equivalent of updating a site on the Internet, for example. Thus, where the ``take-one'' rules apply, consumers would view APRs that are accurate within 30 days of the card issuer's most recent update of the Internet site. Where the direct-mail rules apply, the APRs disclosed would be accurate within 60 days of the sending of the electronic application or solicitation. The Board requests comment on any compliance difficulties this approach may pose, and possible suggestions for their resolution.

Section 226.17(g)--Mail or Telephone Orders--Delay in Disclosures

Section 226.17(g) allows credit to be offered via mail, telephone, or other electronic means and full TILA disclosures to be deferred as long as a certain number of disclosures are ``made

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available in written form.'' The rationale underlying the deferral is that, in some instances, the creditor cannot provide disclosures in the

form required by the regulation because of the lack of face to face or direct interaction with the consumer. Because loan products offered by electronic communication (for example, those offered on the Internet) do not appear to pose the same difficulty, the Board believes that this deferral should not apply to electronic disclosures. The Board believes that permitting a deferral would not effectuate the purpose of the TILA to provide consumers with information about credit terms prior to being obligated. Thus, the proposed rule provides that specific disclosures must be provided before consummation of the transaction.

Requirement That Information Be ``Clear and Conspicuous''

The act and Regulation Z require creditors to present required information ``clearly and conspicuously.'' Under the proposed rule, the ``clear and conspicuous'' requirement applies to electronic communication. The Board does not intend to discourage or encourage specific types of technologies. Regardless of technology, however, the disclosures provided by electronic communication must meet the ``clear and conspicuous'' standard. While a creditor is generally not required to ensure that the consumer has the equipment to read the disclosures, in some circumstances a creditor would have the responsibility of making sure the proper equipment is in place. For example, to use electronic disclosures for credit offered through terminals in a creditor's lobby, or through kiosks located in public or other places, the creditor must ensure that the equipment meets the clear and conspicuous standard for TILA disclosures that are being provided electronically.

Consumer Ability to Retain Disclosures

Regulation Z requires that many of its written disclosures be in a form that the consumer may keep. This requirement would apply to disclosures provided by electronic communication. Creditors would satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the consumer. The requirements for electronic delivery should be similar to the current paper requirements, where creditors generally must mail or deliver the information to the consumer but need not ensure that the consumer reads or retains it. Thus, creditors would not be required to monitor an individual consumer's ability to retain the information, nor to take steps to find out whether the consumer has in fact retained it. The Board anticipates that, where appropriate, a creditor would provide special technical specifications for receiving or retaining information before or at the time a consumer agrees to receive information electronically.

As in the case of the ``clear and conspicuous'' standard discussed above, in circumstances where the creditor (or a network of which the creditor is a member) controls the equipment to be used for the service--such as terminals in institution lobbies or kiosks in shopping centers--the creditor would have the responsibility of ensuring retainability. Provided that the delivery requirements (discussed above) are satisfied, methods for fulfilling this requirement could include, for example, printers incorporated into terminals or a screen message offering to transmit the disclosure to the consumer's electronic mail or post office address.

Signature Requirements Under Regulation Z

There are two signature requirements under Regulation Z. Under Sec. 226.4(d) consumers may elect to accept credit life insurance by signing or initialing an affirmative written request after receiving disclosure about the insurance. Under Sec. 226.23 (and the corresponding model forms and official staff commentary) consumers may cancel certain home-secured loans or waive this right by providing a written signed notice to the creditor. The Board indicated in the May 1996 Regulation E proposal that any electronic authentication method should provide the same assurance as a signature in a paper-based system, and cited security codes and digital signatures as examples of authentication devices that might meet the requirements. The Board is interested in learning about other ways in which authentication in an electronic environment might take the place of the consumer's signature.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive federal disclosures in paper form. As electronic commerce and electronic banking increase and technological

advances take place, obtaining disclosures by electronic communication will likely become more commonplace. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. Thus, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that creditors subject to the TILA and Regulation Z will provide sufficient details about the delivery of disclosures. The Board plans to closely monitor the development of electronic delivery of TILA disclosures and other information, and will address compliance or other issues that may arise as appropriate.

III. Form of Comment Letters

Comment letters should refer to Docket No. R-1005 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3\1/2\ inch or 5\1/4\ inch computer diskettes in any IBM-compatible DOS-based format.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's Office of the Secretary has reviewed the proposed amendments to Regulation Z. Overall, the proposed amendments are not expected to have any significant impact on small entities. The proposed rule would relieve compliance burden by giving creditors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

V. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed revisions under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the burden the proposed revised requirements would impose on state member banks. Creditors would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to print and mail the information in paper form. The use of electronic communication in home banking and financial services may reduce the paperwork burden on creditors and financial institutions or merely may reduce the dollar cost.

The Federal Reserve requests comments from creditors, especially

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state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this rule is effective. Comments are invited on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed revised regulation are found throughout 12 CFR Part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1604(a)) to ensure the disclosure of certain credit costs and terms to consumers, at or before the time consumers enter into a consumer credit transaction and when the availability of consumer credit on particular terms is advertised. The purpose of the disclosures is to encourage competition among various credit sources through informed comparison-

shopping by consumers. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Creditors are also required to retain records as evidence of compliance for twenty-four months.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation Z (OMB No. 7100-0199) for three years. The current estimated total annual burden for this information collection is 1,878,846 hours, as shown in the table below. These amounts reflect the burden estimate of the Federal Reserve System for the 996 state member banks under its supervision. This regulation applies to all types of creditors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

	Number of respondents	Estimated annual frequency	Estimated response time	Estimated annual burden hours
Open-end credit:				
Initial terms.....	996	1,150	2.5 minutes	47,725
Change in terms.....	996	2,500	1.0 minute	41,500
Periodic Statements.....	996	86,250	45.0 seconds	1,073,813
Error resolution.....	996	8	15.0 minutes	1,992
Credit and charge card accounts:				
Advance disclosures.....	996	29,750	10.0 seconds	82,308
Renewal notice.....	996	10,700	5.0 seconds	14,802
Insurance notice.....	996	60	15.0 seconds	249
Home equity plans:				
Advance disclosure.....	996	120	2.0 minutes	3,984
Change in terms.....	996	3	2.0 minutes	100
Closed-end credit disclosures.....	996	5,750	6.4 minutes	610,880
Advertising.....	996	3	30.0 minutes	1,493
Total.....				1,878,846

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General disclosures of credit terms that appear in advertisements or take-one applications are available to the public. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)). Transaction- or account-specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and the consumer. An agency may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation Z is 7100-0199.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation Z. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 226 as follows:

PART 226--TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.2 would be amended by adding a new paragraph (a)(27) to read as follows:

Sec. 226.2 Definitions and rules of construction.

(a) Definitions. * * *

(27) Electronic communication means a message transmitted electronically between a consumer and a creditor in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

* * * * *

&rt-triang>3. Section 226.5 would be amended by adding a new paragraph (a)(5) as follows:&lf-triang>

Sec. 226.5 General disclosure requirements.

(a) Form of disclosures. * * *

&rt-triang>(5) Electronic communication. A creditor and a consumer may agree to send by electronic communication, as that term is defined in Sec. 226.2(a)(27), any information required by this subpart to be provided in writing. Information sent by electronic communication to a consumer must comply with paragraph (a)(1) of this section and any applicable timing requirements contained in this subpart.&lf-triang>

4. Section 226.17 would be amended as follows:

- a. By adding a new paragraph (a)(3); and
- b. By revising paragraph (g) introductory text.

The revision and addition would read as follows:

Sec. 226.17 General disclosure requirements.

(a) Form of disclosures. * * *

&rt-triang>(3) Electronic communication. A creditor and a consumer may agree to send by electronic communication, as that term is defined in Sec. 226.2(a)(27), any information required by this subpart to be provided in writing. Information sent by electronic communication to a consumer must comply with paragraph (a)(1) of this section and any applicable timing requirements contained in this subpart.&lf-triang>

* * * * *

(g) Mail or telephone orders--delay in disclosures. If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or any other written [or electric] communication, &rt-triang>excluding electronic communication as discussed in paragraph (a)(3) of this section,&lf-triang> without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form to the consumer or to the public before the actual purchase order or request:

* * * * *

5. Section 226.31 would be amended by redesignating paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2) as to read as follows:

Sec. 226.31 General rules.

* * * * *

(b)&rt-triang>(1)&lf-triang> Form of disclosures. * * *

&rt-triang>(2) Electronic communication. A creditor and a consumer may agree to send by electronic communication, as that term is defined in Sec. 226.2(a)(27), any information required by this subpart to be provided in writing. Information sent by electronic communication to a consumer must comply with this paragraph (b) and any applicable timing requirements contained in this subpart.&lf-triang>

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 12, 1998.
William W. Wiles,
Secretary of the Board.

[FR Doc. 98-6991 Filed 3-24-98; 8:45 am]
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FEDERAL RESERVE SYSTEM

12CFR Part 202

[Regulation B; Docket No. R-1006]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending Regulation B, which implements the Equal Credit Opportunity Act. The proposal would permit creditors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation if the consumer agrees to such delivery.

DATES: Comments must be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R-1006, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel or Natalie E. Taylor, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 et seq.) makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity

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to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The act is implemented by the Board's Regulation B (12 CFR part 202).

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication for delivery of information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example, in May 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection

of Checks) that allowed financial institutions to send notices electronically. (62 FR 13801, March 18, 1997.)

Having considered comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation B to allow creditors to provide Regulation B disclosures electronically; such disclosures would remain subject to any applicable timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed revisions to address electronic communication under Regulations DD (Truth in Savings), Z (Truth in Lending), and M (Consumer Leasing), published elsewhere in today's Federal Register. In addition, the Board has issued an interim rule under Regulation E also published elsewhere in today's Federal Register so that financial institutions can implement systems to provide Electronic Fund Transfer Act disclosures electronically.

II. Proposed Regulatory Revisions

The ECOA and Regulation B require certain disclosures to be provided to applicants in writing. Under Regulation B, the regulatory requirement that disclosures be in writing has been presumed to require that creditors provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing at least where visual text is involved.

Therefore, pursuant to its authority under section 703(a)(1) of the ECOA, the Board proposes to amend Regulation B to permit creditors to use electronic communication where the regulation calls for information to be provided in writing. The term "electronic communication" is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of "electronic communication" for purposes of this regulation because they do not have the feature generally associated with a writing--visual text.

Section 202.5 Rules Concerning Taking of Applications

A new subsection (f) would be added to Sec. 202.5 to address electronic communication. "Electronic communication" is a visual text message electronically transmitted between a creditor and an applicant's home computer or other electronic device used by an applicant. (Under the ECOA and Regulation B, the term "applicant" includes any person who requests or who has received and extension of credit from a creditor, and any person who is or may become contractually liable regarding an extension of credit. In this notice, the term is used in this context.)

Agreements Between Financial Institutions and Consumers

Section 202.5(f) would permit creditors to send electronic disclosures if the consumer agrees. There may be various ways that a creditor and an applicant agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be determined by applicable state law. The regulation would not preclude a creditor and an applicant from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of ECOA and Regulation B disclosures and other information electronically.

Delivery Requirements for Electronic Communication

Regulation B requires that a creditor "provide," "give," "deliver," or "mail" information to an applicant, or "notify" an applicant of certain information. Generally, the delivery requirement anticipates that a creditor will deliver the information--typically by mail--to an address designated by the applicant. For a paper communication, a creditor would not satisfy that requirement by making disclosures "available" to applicants, for example, at a creditor's office or other location. The Board believes that consumers receiving disclosures by electronic communication should have protections regarding delivery similar to those afforded consumers receiving disclosures in paper form. Simply posting information to an Internet site, however, without some appropriate notice and instructions about how the applicant may obtain the required information would not satisfy the requirement.

As a practical matter, there may be little distinction between sending or delivering electronic disclosures and making them ``available.'' Creditors would have flexibility in how they may deliver electronic disclosures to applicants, including, but not limited to the following examples. They may send disclosures to a consumer-designated electronic mail address or they may designate a location on a website where the applicant enters a personal identification number or other identifier to access required information. Assume that an applicant applies for a credit plan and agrees to receive all ECOA and Regulation B disclosures electronically. Subsequent disclosures, such as adverse action notices, sent (or delivered) to the designated address or placed at a designated location would generally satisfy the delivery requirements of the regulation.

Electronic communication would remain subject to any timing or other applicable requirements under Regulation B. For example, notice of action required by Sec. 202.9(a)(1) of Regulation B must still be provided within thirty days after receiving a completed application. The Board solicits comment on whether further guidance is needed on how to comply with the timing requirements when a notice is posted on an Internet website.

Requirement That Information be ``Clear and Conspicuous''

Currently, Regulation B does not expressly require creditors to present required information in a clear and

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conspicuous format. On the other hand, Regulations CC (Availability of Funds), DD (Truth in Savings), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) all require that information be provided in a clear and conspicuous (or readily understandable) format. Accordingly, the Board believes it may be desirable to apply this same standard to information provided by electronic communication under Regulation B to ensure that information is understandable. The Board requests comment on whether Regulation B should be amended to apply this requirement to disclosures provided electronically.

Applicant's Ability to Retain Disclosures

Currently, only the notice in Sec. 202.9(a)(3)(i)(B) of Regulation B need be provided in a form the applicant may retain. As in the case of the clear and conspicuous requirement discussed above, Regulations CC (Availability of Funds), DD (Truth in Savings), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) all require that information be provided in a form that the consumer may keep. Because the retention requirement for written disclosures (including electronic communication) exists for those regulations, it seems appropriate to apply a comparable standard to Regulation B. The Board requests comment on whether this retention requirement should be extended to electronic communication under Regulation B.

Creditors would satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the applicant. Thus, creditors would not be required to monitor an individual applicant's ability to retain the information, nor to take steps to find out whether the applicant has in fact retained it. The Board anticipates that, where appropriate, a creditor would inform the applicant of special technical specifications for receiving or retaining information before or at the time an applicant agrees to receive information electronically.

However, in circumstances where the creditor (or a network in which the creditor is a member) controls the equipment to be used for the service--such as terminals in institution lobbies or kiosks in public or other places--the creditor would have the responsibility of ensuring retainability. Provided that the delivery requirements (discussed above) are satisfied, methods for fulfilling this requirement could include, for example, printers incorporated into terminals or a screen message offering to transmit the disclosure to the applicant's electronic mail or post office address.

Consumer Requests for Information

Under Regulation B, applicants are entitled to receive certain information upon written request. For example, Sec. 202.5a requires a creditor to provide--either automatically or upon the applicant's written request--a copy of the appraisal report used in connection with

an application for a loan secured by a lien on a dwelling. Where the creditor provides appraisal reports only upon request, the creditor must notify the applicant of the right to request an appraisal and whether the applicant's request must be in writing. Section 202.9(a)(3)(ii) allows a creditor to disclose orally a business applicant's right to a statement of specific reasons for adverse action; however, the creditor must provide the reasons in writing within a specified time period after receiving the applicant's written request for the reasons. The proposed rule would permit all consumer requests required to be in writing to be sent electronically.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive federal disclosures in paper form. As electronic commerce and electronic banking increase and technological advances take place, obtaining disclosures by electronic communication will likely become more commonplace. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. Thus, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that creditors subject to Regulation B will provide sufficient details about the delivery of disclosures. The Board plans to closely monitor the development of electronic delivery of disclosures and other information, and will address compliance or other issues that may arise as appropriate.

III. Form of Comment Letters

Comment letters should refer to Docket No. R-1006 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 1/2 inch or 5 1/4 inch computer diskettes in any IBM-compatible DOS-based format.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's Office of the Secretary has reviewed the proposed amendments to Regulation B. Overall, the proposed amendments are not expected to have any significant impact on small entities. The proposed rule would relieve compliance burden by giving creditors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

V. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed revisions under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the burden the proposed revised requirements would impose on state member banks. Creditors would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to print and mail the information in paper form. The use of electronic communication in home banking and financial services may reduce the paperwork burden on creditors and financial institutions or merely may reduce the dollar cost.

The Federal Reserve requests comments from creditors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this rule is effective. Comments are invited on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information

should be sent to the Office of Management and Budget, Paperwork

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Reduction Project (7100-0201), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR 202.5, 202.9, 202. 12, 202.13, and Appendices B and C. This information is mandatory (15 U.S.C. 1691b(a)(1) and Public Law 104-208, Sec. 2302(a)) to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 et. seq.). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Creditors are required to retain records for twelve to twenty-five months as evidence of compliance.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation B (OMB No. 7100-0201) for three years. The current estimated total annual burden for this information collection is 125,177 hours, as shown in the table below. These amounts reflect the burden estimate of the Federal Reserve System for the 996 state member banks under its supervision. This regulation applies to all types of creditors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

	Number of respondents	Estimated annual frequency	Estimated response time	Estimated annual burden hours
Notification.....	996	1,715	2.50 minutes	71,173
Credit history reporting.....	996	850	2.00 minutes	28,220
Monitoring.....	996	360	.50 minute	2,988
Appraisal:				
Appraisal report upon request.....	996	190	5.00 minutes	15,770
Notice of right to appraisal.....	996	1,650	.25 minute	6,848
Self-testing:				
Recordkeeping of test.....	45	1	2 hours	90
Recordkeeping of corrective action..	11	1	8 hours	88
Total.....				125,177

Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)). The adverse action disclosure is confidential between the institution and the consumer involved.

An agency may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation B is 7100-0201.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation B. New language is shown inside bold-faced arrows.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 202 as set forth below:

PART 202--EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691-1691f.

2. Section 202.5 would be amended by adding a new paragraph (f) to read as follows:

Sec. 202.5 Rules concerning taking of applications.

* * * * *

&rt-triang>(f) Electronic communication means a message transmitted electronically between an applicant and a creditor in a format that allows visual text to be displayed on equipment such as a personal computer monitor. A creditor and an applicant may agree to send by electronic communication any information required by Secs. 202.5a, 202.9, or 202.13(b), in accordance with applicable timing requirements. Disclosures provided by electronic communication shall be clear and conspicuous and in a form that the applicant may keep.<lf-triang>

By order of the Board of Governors of the Federal Reserve System, March 12, 1998.
William W. Wiles,
Secretary of the Board.
[FR Doc. 98-6992 Filed 3-24-98; 8:45 am]
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 FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R-1007]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; technical amendments.

 SUMMARY: The Board is publishing for comment a proposed rule to eliminate the extended time periods in Regulation E for investigating claims involving point-of-sale (POS) debit card and foreign-initiated transactions. Regulation E implements the Electronic Fund Transfer Act. Financial institutions generally have up to 10 business days to provisionally credit an account and up to 45 calendar days to complete an investigation of an alleged error. For POS and foreign transactions, financial institutions have up to 20 business days under the regulation to

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provisionally credit an account and up to 90 calendar days to complete the investigation of an alleged error. The Board believes that technological improvements in payment systems should permit consumer claims of error to be investigated more quickly than in the past, and proposes to amend the regulation accordingly. The proposed rule also contains a technical amendment to a model form to harmonize it with the regulation.

DATES: Comments must be received on or before May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R-1007, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building Courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Except as provided in the Board's Rules Regarding Availability of Information (12 CFR 261.12), comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP-500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Obrea O. Poindexter, Staff Attorney, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 et seq., enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR Part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home banking program. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

II. Proposed Regulatory Revisions

Error Resolution--POS Transactions

The EFTA requires a financial institution to investigate and resolve a consumer's claim of error--for an unauthorized EFT, for example--within specified time limits. Within 10 business days after receiving notice of an alleged error an institution must either resolve the claim or provisionally credit the consumer's account while continuing to investigate. In the latter case, the institution must resolve the claim no later than 45 calendar days after receiving notice.

For POS and foreign transactions, Regulation E provides longer time periods; it allows 20 business days to resolve a claim of an error (or to provisionally credit an account if the investigation takes longer), and 90 calendar days to complete the investigation. The rule allows

issuers to avoid having to provisionally credit an account before the investigation is complete. The longer periods were adopted by the Board in 1982 for foreign transactions; and were adopted in 1984 for POS transactions, along with amendments to Regulation E to cover paper-based debit card transactions. Initially, the Board proposed to have the longer time periods for resolving claims of error apply only to paper-based debit card transactions (at merchant locations) that did not involve electronic terminals. After public comment, the Board adopted a final rule that applied the extended time frames to all POS transactions. The adoption of a uniform rule avoided the complexity of having the timing rules depend on how the particular EFT was initiated, which would have been confusing to consumers and burdensome to institutions. Moreover, at that time only a small portion of the POS debit card transactions involved electronic terminals.

The use of electronic terminals for all types of POS debit card transactions is now commonplace. Debit card transactions using personal identification numbers (PINs) at grocery stores and other merchant locations (referred to as PIN-protected) have been the most common type of debit card transaction in the United States. In the past few years, however, there has been an increase in the use at POS terminals of debit cards that can be used without a PIN (commonly referred to as check cards). Besides making them available upon request, many institutions have automatically replaced their customers' existing PIN-protected cards with cards that can be used with a PIN or without a PIN depending on where the transaction takes place.

This development has raised concerns about the potentially greater consumer exposure to losses in the absence of PIN protection. On September 24, 1997, the Subcommittee on Financial Institutions and Consumer Credit of the House Committee on Banking and Financial Services held a hearing on two bills to amend the EFTA in connection with the use of check cards. The bills would limit consumer liability for check cards, restrict unsolicited issuance of the cards in substitution for PIN-protected cards, add disclosures, and require institutions to provisionally recredit accounts sooner while investigating claims of unauthorized use or other errors.

With regard to the investigation of claims of error, legislation was introduced that would require institutions to recredit a consumer's account within three business days of notice of the claim of error. An industry representative of a card association testified that standards were voluntarily being adopted to require member institutions to provisionally credit accounts involving the use of a check card within five business days.

The Board believes that technical improvements in the payment system should permit consumer claims involving POS transactions to be investigated more quickly for transactions at POS; the same may be true for foreign transactions as well. Testimony at the September 1997 congressional hearing supports that conclusion. The Board believes that, especially in the context of accounts that can be accessed without PIN protection (potentially increasing consumer exposure to losses), the importance of more prompt recrediting of consumers' funds pending investigation may outweigh the compliance burden, if any, associated with this change. Therefore, the Board proposes to eliminate the extended time periods for POS and foreign transactions. The Board solicits specific comment on whether removal of the special rule would impose an undue burden.

Error Resolution--New Accounts

In the course of the Board's review of Regulation E, financial institutions suggested a change in the error resolution requirements when a new account is involved. The problem arises when individuals open an account with

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the intent to defraud. Such individuals may open an account, immediately withdraw all or a large portion of the funds through ARMS, and file a claim with the financial institution disputing the ATM transactions. Often they receive provisional credit because of the financial institution's inability to research the claim (such as by obtaining photographic evidence from a nonproprietary ATM) within ten business days of a claim. At that point, the individual immediately withdraws the funds that were provisionally credited and abandons the account. Institutions believed that having more time to investigate errors involving new accounts would enable them to limit their losses and control this type of fraud.

The Board proposed in May 1996 to amend Regulation E, pursuant to its section 904(c) authority to provide for adjustments and exceptions in the regulation, to extend the error-resolution time periods for new accounts. The proposal would have allowed 20 business days for resolving an error before an institution is required to provisionally credit, and an outside limit of 90 calendar days for resolving the claim. The Board solicited comment on the extensions of time, on the 30-day definition for new accounts, and on whether consumer protections relating to error resolution would be adversely affected.

Comments on the proposed rule, from financial institutions and trade associations, were generally favorable. However, in light of the proposed rule to reduce the time for resolving errors involving POS and foreign transactions, the Board is deferring final action until action is taken on the POS and foreign transaction proposal.

Technical Amendment to Error Resolution Notice

Regulation E requires financial institutions to investigate and resolve errors alleged by consumers, either within 10 business days after receiving the consumer's notice of error or within 45 calendar days after receiving the notice, provided the institution provisionally credits the consumer's account within 10 business days. Upon completion

of the investigation, the institution must notify the consumer of its findings. Prior to the 1996 revision of Regulation E, the institution had an additional three days to notify the consumer only if the institution found that an error did not occur and was operating under the 45-day rule. If the institution found that an error did occur, the institution was required to notify the consumer no later than the tenth business day or the 45th calendar day, as applicable.

In the 1996 revision, the Board amended the error resolution procedures (Sec.205.11) to allow institutions the three additional days to notify the consumer in all cases. However, the model error resolution notice (Appendix A, paragraph A-3) was not revised at that time to conform to the amendment to Sec. 205.11. The text of the model notice is being amended to conform it to Sec.205.11 as amended.

III. Form of Comment Letters

Comment letters should refer to Docket No. R-1007. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5" or 5.25" size, in any DOS-compatible format. Comments on computer diskettes must be accompanied by a paper version.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's office of the Secretary has reviewed the proposed amendments to Regulation E. The Board believes that the proposal to shorten the time period for investigating errors alleged in point-of-sale debit card transactions will provide increased consumer protection without any increase in regulatory burden. The current exception to the statutory requirement of 10 business days for such investigations was implemented at a time when paper-based transactions were more common. The Board believes that such transactions are uncommon today, beyond the initial deposit of transaction information when depository institutions and third-party processors convert any paper-based information to electronic form. The Board specifically solicits comment on extent of any difficulty that this change might warrant.

V. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the burden the proposed revised requirements would impose on state member banks. Issuers would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to print and mail the information in paper form. The use of electronic communication may reduce the paperwork burden of financial institutions or merely may reduce the dollar cost.

The Federal Reserve requests comments from issuers, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this interim regulation is effective. Comments are invited on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0200), Washington, DC 20503, with copies of such comments sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this interim regulation are found throughout 12 CFR Part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 et seq.) to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are also required to retain records for 24 months as evidence of compliance.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation E (OMB No. 7100-0200) for three years. The current estimated total annual burden for this information collection is 462,839 hours, as shown in the table below. These amounts reflect the burden estimate of the Federal Reserve System for the 851 state member banks estimated to be covered by Regulation E. This regulation applies

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to all types of issuers, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

	Number of respondents	Estimated annual frequency	Estimated response time	Estimated annual burden hours
Initial Disclosures:				
Initial terms.....	851	250	2.50 minutes.....	8,865
Change in terms.....	851	340	1.00 minute.....	4,822
Transaction disclosures:				
Terminal receipts.....	851	71,990	0.25 minute.....	255,265
Deposit verifications.....	851	420	1.50 minutes.....	8,936
Periodic disclosures.....	851		12 ,800 1.00 minute.....	181,547
Error resolution rules.....	851	8	30.00 minutes.....	3,404
Total.....				462,839

Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)). The disclosures and information about error allegations are confidential between the institution and the consumer. An agency may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation E is 7100-0200.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation E. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

Pursuant to the authority granted in sections 904 (a) and (c) of the Electronic Fund Transfer Act, 15 U.S.C. 1693b (a) and (c), and for the reasons set forth in the preamble, the Board proposes to amend Regulation E, 12 CFR part 205, as set forth below:

PART 205--ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693-1693r.

Sec. 205.11 [Amended]

2. Section 205.11 would be amended by removing paragraph (c)(3) and redesignating paragraph (c)(4) as paragraph (c)(3).3. In Appendix A to Part RESOLUTION NOTICE (Secs.205.7(b)(10) and 205.8(b)), the undesignated second and third paragraphs following paragraph (a)(3) would be revised to read as follows:

205 , in A-3 MODEL FORMS FOR ERROR

Appendix A to Part 205--Model Disclosure Clauses and Forms

* * * * *

A-3--MODEL FORMS FOR ERROR RESOLUTION NOTICE (Secs .205.7(b)(10) AND 205.8(b))

(a) Initial and annual error resolution notice (Secs. 205.7(b)(10) and 205.8(b))

* * * * *

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

We will tell you the results of our investigation within three business days after completing it. If we decide that there was no error, this will include [we will send you] a written explanation [within three business days after we finish our investigation]. You may ask for copies of the documents that we used in our investigation.

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By order of the Board of Governors of the Federal Reserve System, March 12, 1998.
 William W. Wiles,
 Secretary of the Board.
 [FR Doc. 98-6993 Filed 3-24-98; 8:45 am]
 BILLING CODE 6210-01-P