FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-1281]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for comments.

SUMMARY: The Board is proposing to amend Regulation B, which implements the Equal Credit Opportunity Act, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the Code of Federal Regulations would reduce confusion about the status of the provisions and simplify the regulation. The Board is also proposing to amend Regulation B to provide that when an application is accessed by an applicant in electronic form, certain disclosures must be provided to the applicant in electronic form on or with the application, and that in these circumstances the consumer consent and other provisions of the E-Sign Act do not apply. Similar rules are being proposed under other consumer financial services regulations administered by the Board.

DATES: Comments must be received on or before **[insert date that is 60 days after the date of publication in the Federal Register]**.

ADDRESSES: You may submit comments, identified by Docket No. R-1281, by any of the following methods:

- Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: John C. Wood or David A. Stein, Counsels, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

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, or age (provided the applicant has the capacity 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 Board's Regulation B (12 CFR part 202) implements the ECOA. The ECOA and Regulation B require certain disclosures to be provided to applicants, and some of those disclosures must be provided in writing.

Board Proposals Regarding Electronic Disclosures

On May 2, 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit financial institutions to provide disclosures by sending them electronically (61 FR 19,696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14,528, March 25, 1998) and similar proposals under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings)(63 FR 14,552, 14,538, 14,548, and 14,533, respectively, March 25, 1998).

Based on comments received on the 1998 proposals, in September 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49,688, 49,699, 49,713, 49,722 and 49,740, respectively, September 14, 1999). At the same time, the Board published an interim rule under Regulation DD allowing depository institutions to deliver disclosures on periodic statements in electronic form if the consumer agreed (64 FR 49,846, September 14, 1999). While these rulemakings were pending, federal legislation was enacted addressing the use of electronic documents and records, including consumer disclosures.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed into law the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 et seq.). The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

The E-Sign Act, including the special consumer notice provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing under Regulations B, E, M, Z and DD if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

The Interim Final Rules

On April 4, 2001, the Board published interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation B (66 FR 17,779). Similar interim final rules for Regulations E, M, Z, and DD were published on March 30, 2001 (66 FR 17,322 (M) and 17,329 (Z)), and April 4, 2001 (66 FR 17,786 (E) and 17,795 (DD)). The interim final rules incorporated most of the provisions that were part of the 1999 proposals.

Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Creditors and other persons, as applicable, generally were required to obtain applicants' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act.

The 2001 interim final rule for Regulation B established uniform requirements for the timing and delivery of electronic disclosures. Under the interim rule, disclosures could be sent to an e-mail address designated by the applicant, or could be made available at another location, such as an Internet web site. If the disclosures were not sent by e-mail, creditors would have to provide a notice to applicants alerting them to the availability of the disclosures. Disclosures posted on a web site would have to be available for at least 90 days to allow applicants adequate time to access and retain the information. Creditors also would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files. Similar provisions were included in the interim final rules adopted under Regulations E, M, Z, and DD.

Commenters on the interim final rules identified significant operational and security concerns with respect to the requirement to send the disclosure or an alert notice to an e-mail address designated by the consumer. For example, commenters stated that some consumers do not have e-mail addresses or may not want personal financial information sent to them by e-mail. Commenters also noted that e-mail is not a secure medium for delivering confidential information and that consumers' e-mail addresses frequently change. The commenters also opposed the requirement for redelivery in the event a disclosure was returned undelivered. In addition, many commenters asserted that making the disclosures available for at least 90 days, as required by the interim final rule, would increase costs and would not be necessary for consumer protection.

In August 2001, in response to comments received, the Board lifted the previously established October 1, 2001 mandatory compliance date for all of the interim final rules. (66 FR 41,439, August 8, 2001.) Thus, institutions are not required to comply with the interim final rules. Since that time, the Board has not taken further action with respect to the interim final rules on electronic disclosures in order to allow electronic commerce, including electronic disclosure practices, to continue to develop without regulatory intervention and to allow the Board to gather further information about such practices.

II. The Proposed Rules

The Board is proposing to amend Regulation B and the official staff commentary by (1) withdrawing portions of the 2001 interim final rule on electronic disclosures that restate or cross-reference provisions of the E-Sign Act and accordingly are unnecessary; (2) withdrawing other portions of the interim final rule that the Board now believes may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection; and (3) retaining the substance of certain provisions of the interim final rule that provide regulatory relief or guidance regarding electronic disclosures. (Similar amendments are also being proposed by the Board, in today's issue of the Federal Register, under Regulations E, M, Z, and DD.)

Because compliance with the 2001 interim final rules is not mandatory, removing most portions of the interim rules from the Code of Federal Regulations, while finalizing other provisions, would reduce confusion about the status of the electronic disclosure provisions and simplify the regulation. Certain provisions in the interim final rules, including provisions addressing foreign language disclosures, were not affected by the lifting of the mandatory compliance date and accordingly are now in final form; these provisions would not be deleted. The Board is also proposing to adopt certain provisions that are identical or similar to provisions in the 2001 interim final rules in order to enhance the ability of consumers to apply for credit online and provide guidance or eliminate a substantial burden on electronic commerce, as discussed further below.

Since 2001, industry and consumers have gained considerable experience with electronic disclosures. During that period, there has been no indication that consumers have been harmed by the fact that compliance with the interim final rules is not mandatory. The Board also has reconsidered certain aspects of the interim final rules,

such as sending disclosures by e-mail, in light of increased concerns about data security, identity theft, and "phishing" (i.e., prompting consumers to reveal confidential personal or financial information through fraudulent e-mail requests that appear to originate from a financial institution, government agency, or other trusted entity) that have become more pronounced since 2001. Finally, the Board is proposing to eliminate certain aspects of the 2001 interim final rule, such as provisions regarding the availability and retention of electronic disclosures, as unnecessary in light of current industry practices.

Pursuant to the Board's authority under section 703(a)(1) of the ECOA, as well as under section 104(d) of the E-Sign Act,[1] the Board is also proposing to specify the circumstances under which certain disclosures may be provided to an applicant in electronic form, rather than in writing as required by Regulation B, without obtaining the applicant's consent under section 101(c) of the E-Sign Act. The proposed rule would also amend § 202.4(d) of Regulation B to clarify that certain disclosures must be provided to the applicant in electronic form on or with an application that is provided to and accessed by the applicant in electronic form.

The interim final rule allowed creditors to provide certain disclosures to applicants in electronic form without obtaining E-Sign consent if the disclosures were provided on or with an application. The Board continues to believe that creditors should not be required to obtain the consumer's consent in order to provide application-related disclosures if the applicant accesses the application containing these disclosures in electronic form, such as at an Internet web site. The Board believes consumers would not be harmed, and in fact would benefit, by having timely access to these application-related disclosures in electronic form. Consumers who choose to apply for credit online would be unduly burdened if they had to consent in accordance with the E-Sign Act in order to access application forms that are accompanied by disclosures. Applying the consumer consent provisions of the E-Sign Act to these disclosures could impose substantial burdens on electronic commerce and make it more difficult for consumers to apply for credit.

At the same time, the Board recognizes that consumers who apply for credit online may not want to receive other disclosures electronically. Therefore, with respect to, for example, adverse action notices or copies of appraisal reports, creditors would be required to provide written disclosures or obtain the consumer's consent in accordance with the E-Sign Act to provide such disclosures in electronic form.

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[1] Section 703(a)(1) of ECOA provides that regulations prescribed by the Board under ECOA "may provide for such adjustments and exceptions . . . as in the judgment of the Board are necessary or proper to effectuate the purposes of [ECOA], . . . or to facilitate or substantiate compliance [with the requirements of ECOA]." Section 104(d) of the E-Sign Act authorizes federal agencies to adopt exemptions for specified categories of disclosures from the E-Sign notice and consent requirements, "if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers." For the reasons stated in this Federal Register notice, the Board believes that these criteria are met in the case of the application disclosures. In addition, the Board believes ECOA section 703(a)(1) authorizes the Board to permit institutions to provide disclosures electronically, rather than in paper form, independent of the E-Sign Act.

Finally, the Board is proposing to delete, as unnecessary, certain provisions that restate or cross-reference the E-Sign Act's general rules regarding electronic disclosures (including the consumer consent provisions) and electronic signatures because the E-Sign Act is a self-effectuating statute. The proposed revisions to Regulation B and the official staff commentary are described more fully below in the Section-by-Section Analysis.

The Board solicits comment on all aspects of this proposal. Specifically, the Board seeks comment on the appropriateness of eliminating certain provisions and retaining other provisions contained in the 2001 interim final rule.

III. Section-by-Section Analysis

12 CFR Part 202 (Regulation B)

Section 202.4 General rules

Introduction

Section 202.4(d) prescribes the form of disclosures, and specifically provides that a creditor that provides in writing any disclosures or information required by the regulation must provide the disclosures in a clear and conspicuous manner and, except for the disclosures required by §§ 202.5 and 202.13, in a form that the applicant may keep. The Board proposes to redesignate this provision as the general rule in § 202.4(d)(1).

The Board also proposes to add a new § 202.4(d)(2) to clarify that, with regard to disclosures that the regulation requires to be given in writing, creditors may provide such disclosures in electronic form, subject to compliance with the consumer consent and other applicable sections of the E-Sign Act. Some creditors may provide disclosures to applicants both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those creditors, the duplicate electronic form of the disclosures may be provided to applicants without regard to the consumer consent or other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's disclosure requirements.

Section 202.4(d)(2) would also provide that certain disclosures, when included on or with an application, must be provided to the applicant in electronic form if the applicant accesses the application electronically. Under those circumstances, these disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The Board believes that, for an application accessed by the consumer in electronic form, permitting creditors to provide application-related disclosures in electronic form without regard to the consumer consent and other provisions of the E-Sign Act will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will facilitate applications for credit by enabling consumers to receive important disclosures at the same time they access an application without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent

procedures set forth in the E-Sign Act in order to complete an online application is potentially burdensome and could discourage consumers from shopping for credit online. Moreover, because these consumers are viewing the application online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.

The following disclosures would be provided electronically without obtaining the consumer's consent under E-Sign, as set forth in § 202.4(d)(2):

Section 202.5(b)(1). Section 202.5(b)(1) provides that if a creditor inquires about an applicant's race, color, religion, national origin, or sex for the purpose of conducting a self-test, the creditor must disclose that providing the information is optional for the applicant, that the information is requested to monitor compliance with the ECOA, and that the creditor may not discriminate either on the basis of the information or whether the applicant chooses to furnish it.

Section 202.5(b)(2). Section 202.5(b)(2) provides that when a creditor requests an applicant to designate a title on an application form, the application form must disclose that the designation of a title is optional.

Section 202.5(d)(1). Section 202.5(d)(1) provides that if an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but must use only the terms married, unmarried, and separated. The creditor may also explain that the unmarried category includes single, divorced, and widowed persons.

Section 202.5(d)(2). Section 202.5(d)(2) prohibits a creditor from inquiring whether income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

Section 202.13. Section 202.13(a) requires a creditor to request information regarding an applicant's ethnicity, race, sex, marital status, and age as part of an application for dwelling-secured credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence. Section 202.13(b) provides that questions about ethnicity, race, sex, marital status and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application.

Section 202.13(c) requires the creditor to disclose to the applicant that the information about ethnicity, race, sex, marital, status and age is being requested by the federal government to monitor compliance with federal statutes that prohibit creditors from discriminating against applicants. The creditor must also disclose that if the applicant chooses not to provide the information, the creditor is required to note the ethnicity, race, and sex on the basis of visual observation or surname.

Section 202.14(a)(2)(i). Section 202.14(a)(2)(i) requires a creditor that provides copies of appraisal reports only upon request (rather than routinely) to notify the applicant of the right to obtain a copy of the report.

Discussion

Under Regulation B, an application generally is not required to be in writing.[2] Section 202.2(f) of the regulation defines the term "application" to include "an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested." Since an application does not have to be in writing, the disclosures that are provided on or with an application in certain circumstances do not have to be provided in writing. These disclosures include those required under §§ 202.5(b)(1), 202.5(b)(2), 202.5(d)(1), 202.5(d)(2), and 202.13. (Section 202.14(a)(2)(i) specifies that the notice of the right to a copy of the appraisal report must be provided in writing.) As a practical matter, however, most creditors use written or electronic application forms and typically make these disclosures, where applicable, on the written or electronic application form or a separate accompanying form. The Board's Model Application Forms in Appendix B to the regulation include some of these disclosures on the application forms.

Therefore, the Board proposes to amend § 202.4(d) to provide that each of the disclosures noted above, where given on or with the application and where the application is accessed by the applicant in electronic form, must be provided to the applicant in electronic form on or with the application. The proposed revision would also clarify that under those circumstances, those disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.

The Board also proposes to add new comment 4(d)(2)-1 to clarify that if an applicant accesses an application in electronic form, the disclosures required to accompany the application must be provided to the applicant in electronic form on or with the application. An applicant accesses an application in electronic form when, for example, the applicant views the application on his or her home computer. On the other hand, if an applicant receives an application in the mail, the creditor would not satisfy its obligation to provide the disclosures at that time by including a reference in the application to the web site where the disclosures are located.

Section 202.9 Notifications

Section 202.9(g) provides that when an application for credit is submitted through a third party to more than one creditor and no credit is offered (or the applicant does not expressly accept or use any credit offered), each creditor taking adverse action must

[2] Under § 202.4(c), a creditor must take written applications for dwelling-related credit for which monitoring information (under § 202.13) must be collected. However, use of a printed form is not required. A creditor may accept telephone or other oral applications and either write down or enter into a computer the pertinent information provided orally by the applicant. See Comments 202.4(c)-1 and 2.

provide the notice required by § 202.9(a), but may do so through a third party. The 2001 interim final rule added a new § 202.9(h) to clarify that such third parties may use electronic disclosures to provide the required adverse action notice. The Board is proposing to remove this provision as unnecessary because the E-Sign Act is a self-effectuating statute and permits any person to use electronic records subject to the conditions set forth in the Act.

Section 202.16 Requirements for electronic communication

Section 202.16 was added by the 2001 interim final rule to address the general requirements for electronic communications.[3] The Board proposes to remove § 202.16 from Regulation B and the accompanying sections of the staff commentary.

In the interim rule, § 202.16(a) defines the term "electronic communication" to mean a message transmitted electronically that can be displayed on equipment as visual text, such as a message displayed on a personal computer monitor screen. The deletion of § 202.16(a) would not change applicable legal requirements under the E-Sign Act.

Sections 202.16(b), (c) and (f) incorporate by reference provisions of the E-Sign Act, such as the provision allowing disclosures to be provided in electronic form, the requirement to obtain the applicant's affirmative consent before providing disclosures in electronic form, and the provision allowing electronic signatures. The deletion of these provisions will have no impact on the general applicability of the E-Sign Act to Regulation B disclosures.

The special rule in § 202.16(c) exempting from the disclosures relating to adverse action in connection with business credit, appraisal reports, and the collection of monitoring information has been eliminated. The special rule for disclosures relating to adverse action notices provided in connection with business credit has been removed because the E-Sign Act's consumer consent requirements do not apply to business credit. The special rules for disclosures relating to appraisal reports and the collection of monitoring information are addressed in § 202.4(d)(2) of the proposed rule.

Sections 202.16(d) and (e) of the interim final rule address specific timing and delivery requirements for electronic disclosures under Regulation B, such as the requirement to send disclosures to an applicant's e-mail address (or post the disclosures on a website and send a notice alerting the applicant to the disclosures). The Board no longer believes that these additional provisions are necessary or appropriate. Electronic disclosures have evolved since 2001, as industry and consumers have gained experience with them. Although many institutions offer e-mail alert notices to consumers in connection with online services, some consumers may choose not to receive notifications by e-mail and the Board sees no reason to require e-mail alert notices in all cases. In addition, the Board has reconsidered certain aspects of the interim final rules, such as

[3] The requirements for electronic communication were initially adopted in § 202.17. In the Board's comprehensive review of Regulation B, this provision was renumbered as § 202.16. (68 FR 13144, March 18, 2003.)

sending disclosures by e-mail, in light of concerns about data security, identity theft, and phishing that have become more pronounced since 2001.

With regard to the requirement to attempt to redeliver returned electronic disclosures, as the commenters noted, creditors would be required to search their files for an additional e-mail address to use, and might be required to use a postal mail address for redelivery if no additional e-mail address was available. The Board believes that both requirements would likely be unduly burdensome. In addition, the concerns that have been raised about the requirement to use e-mail for the initial delivery of a disclosure or notice apply equally to the use of e-mail for an attempted redelivery.

Under the proposed rule, the Board would not require creditors to maintain disclosures posted on a web site for at least 90 days as provided in the 2001 interim final rule for several reasons. The Board believes that an appropriate time period consumers may want electronic disclosures to be available may vary depending upon the type of disclosure, and is reluctant to establish specific time periods depending on the disclosures. Nevertheless, while the Board is not proposing to require disclosures to be maintained on an Internet web site for any specific time period, the general requirements of Regulation B continue to apply to electronic disclosures, such as the requirement to provide certain disclosures to consumers at specified times and in a form that the consumer may keep. Although these general requirements apply to electronic disclosures, the Board does not believe that the 90-day time period set out in § 202.16(d) of the 2001 interim final rule is needed to ensure that creditors satisfy these requirements when they provide electronic disclosures. The Board, however, will monitor creditors' electronic disclosure practices with regard to the ability of applicants to retain certain Regulation B disclosures and will consider further regulatory action if it appears necessary.

The official staff commentary to § 202.16 of the interim final rule provides guidance on the provisions set forth in § 202.16 such as delivery of disclosures or alert notices by e-mail, redelivery if disclosures or a notice is returned undelivered, and retention of disclosures on a web site for 90 days. As noted above, because the Board is proposing to delete § 202.16 of the regulation, the Board also proposes to delete the accompanying provisions of the official staff commentary.

Section 202.17 Enforcement, penalties, and liabilities

The Board proposes to redesignate § 202.17 as § 202.16 concurrent with the deletion of current § 202.16, as discussed above. No changes would be made to the substance of the provision. The Board is also proposing to redesignate the provisions of § 202.17 of the official staff commentary as § 202.16, with a conforming, non-substantive revision.

IV. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.)(RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. Statement of the objectives of the proposal. The Board is proposing revisions to Regulation B to withdraw the 2001 interim final rule on electronic communication and to allow creditors to provide certain disclosures to applicants in electronic form on or with an application that is accessed by the applicant in electronic form without regard to the consumer consent and other provisions of the E-Sign Act. The Board is also proposing to clarify that other Regulation B disclosures may be provided to applicants in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

ECOA was enacted to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, age, the fact that all or part of the applicant's income derives form a public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The primary objective of ECOA is to prohibit creditors from discriminating against any applicant on any of these grounds with respect to any aspect of a credit transaction. 15 U.S.C. 1691(a). ECOA authorizes the Board to prescribe regulations to carry out the purposes of the statute. 15 U.S.C. 1691b(a)(1). The Act expressly states that the Board's regulations may contain "such classifications, differentiations, or other provisions, . . . as, in the judgment of the Board, are necessary or proper to carry out the purposes of [the Act], to prevent circumvention or evasion [of the Act], or to facilitate compliance [with the Act]." 15 U.S.C. 1691b(a)(1). The Board believes that the proposed revisions to Regulation B discussed above are within the

Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. Small entities affected by the proposal. The ability to provide application-related disclosures in electronic form on or with an application that is accessed by the applicant in electronic form applies to all creditors, regardless of their size. Accordingly, the proposed revisions would reduce burden and compliance costs for small entities by providing relief, to the extent the E-Sign Act applies in these circumstances. The number of small entities affected by this proposal is unknown.

3. Other federal rules. The Board believes no federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation B.

4. Significant alternatives to the proposed revisions. The Board solicits comment on any significant alternatives that may provide additional ways to reduce regulatory burden associated with this proposed rule.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR 202. 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 7100-0201.

Section 703(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691b(a)(1)) authorizes the Board to issue regulations to carry out the provisions of the Act. This information collection is mandatory. The purpose of the Act is 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 income, 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 adverse action disclosure is confidential between the institution and the consumer involved. 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 USC 522 (b)).

Regulation B applies to all types of creditors, not just State member banks. However, under the Paperwork Reduction Act, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Federal Reserve. Appendix A of Regulation B defines these creditors as State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial

lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden for the institutions they supervise. Creditors are required to retain records for 12 to 25 months as evidence of compliance. The annual burden is estimated to be 165,630 hours for the 1,172 Federal Reserve-regulated creditors that are respondents for purposes of the PRA.

As mentioned in the Preamble, new § 202.4(d)(2) would be added to clarify the disclosure requirements in §§ 202.5(b)(1), 202.5(b)(2), 202.5(d)(1), 202.5(d)(2), 202.13, and 202.14. The Federal Reserve estimates that 200 respondents would take approximately 1 minute per transaction to comply with the existing disclosures requirements in §§ 202.5(b)(1), 202.5(b)(2), 202.5(d)(1), 202.5(d)(2), and estimates the annual burden to be 8,350 hours; 1,172 respondents would take approximately .50 minutes per transaction to comply with the existing disclosures requirements in § 202.13 and estimates the annual burden to be 3,502 hours. 1,172 respondents would take approximately 5.25 minutes per transaction to comply with the existing disclosures requirements in § 202.14 and estimates the annual burden to be 26,613 hours. The Federal Reserve requests specific comment on whether the revisions in this proposed rule would change the burden on respondents.

Comments are invited on: a. whether the 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 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 Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0201), Washington, DC 20503.

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, while language that would be removed is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation B, 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 202.4 would be amended by redesignating paragraph (d) as paragraph (d)(1) and adding a new paragraph (d)(2), to read as follows:

§ 202.4 General rules.

* * * * *

(d) Form of disclosures**[**.**]** ►—(1) General rule.◄ A creditor that provides in writing any disclosures or information required by this regulation must provide the disclosures in a clear and conspicuous manner and, except for the disclosures required by sections 202.5 and 202.13, in a form the applicant may retain.

►(2) Disclosures in electronic form. The disclosures required by this part that are required to be given in writing may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 et seq.). Where the disclosures under §§ 202.5(b)(1), 202.5(b)(2), 202.5(d)(1), 202.5(d)(2), 202.13, and 202.14(a)(2)(i) accompany an application accessed by the applicant in electronic form, these disclosures must be provided to the applicant in electronic form on or with the application form. These disclosures may be made in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.◄

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3. Section 202.9 would be amended by removing paragraph (h), to read as follows:

§ 202.9 Notifications.

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[(h) Duties of third parties. A third party may use electronic communication in accordance with the requirements of § 202.16, as applicable, to comply with the requirements of paragraph (g) of this section on behalf of a creditor.**]**

4. Section 202.16 would be removed.

5. Section 202.17 would be redesignated as § 202.16.

6. In Supplement I to Part 202, the following amendments would be made:

a. In Section 202.4—General Rules, under (4)(d) Form of Disclosures, new paragraph 2. would be added.

b. Section 202.16 would be removed;

c. Section 202.17 would be redesignated as § 202.16.

The amendments to read as follows:

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SUPPLEMENT I TO PART 202—OFFICIAL STAFF INTERPRETATIONS

* * * * *

Section 202.4—General Rules

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(4)(d) Form of Disclosures

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►2. Electronic form of disclosures. If a consumer accesses an application in electronic form, the disclosures required to accompany the application must be provided to the consumer in electronic form on or with the application; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer is provided with a paper application, the disclosures must be provided in paper form on or with the application. For example, if a consumer receives an application in the mail, the creditor would not satisfy its obligation to provide the disclosures at that time by including a reference in the application to the web site where the disclosures are located.◄

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Section 202.**[**17**]**►16◄—Enforcement, Penalties, and Liabilities

[17**]**►16◄(c) Failure of compliance.

1. Inadvertent errors. Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. Correction of error. For inadvertent errors that occur under §§ 202.12 and 202.13, this section requires that they be corrected prospectively.

By order of the Board of Governors of the Federal Reserve System, April 20, 2007.

Jennifer J. Johnson (signed)
Jennifer J. Johnson,
Secretary of the Board