

MEMO

DATE: August 11, 1999

TO: Board of Governors

FROM: Governor Gramlich, Chairman
Committee on Consumer and Community Affairs

SUBJECT: Electronic Delivery of Federally Mandated Disclosures

The attached item has been reviewed by members of the Consumer and Community Affairs Committee and is now ready for Board consideration.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

MEMO

DATE: August 11, 1999

TO: Board of Governors

FROM: Division of Consumer and Community Affairs
(D. Smith, A. Hurt and Staff)*

SUBJECT: Electronic Delivery of Federally Mandated Disclosures

ACTION REQUESTED:

Approval to publish for comment: (1) modified proposed rules that would authorize the electronic delivery of disclosures required by Regulations B (Equal Credit Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings); and (2) an interim rule under Regulation DD that would immediately permit depository institutions to provide disclosures on periodic statements of account activity electronically. To summarize:

C The modified proposed rules would generally be uniform for these regulations.

C Financial institutions and others would use a standardized format to obtain consumers' consent to receive disclosures electronically, in most cases.

C Disclosures could be delivered to a consumer's e-mail address, or made available at another location such as an institution's Internet website location.

C Disclosures made to consumers transacting business in person (for example, closing a mortgage loan) would have to be in paper form.

* J. Michaels, L. Chanin, J. Ahrens, J. Wood, K. Cho-Miller, and M. Hentrel.

SUMMARY

In March 1998, the Board issued proposals to permit financial institutions, creditors, lessors, and others to use electronic communication to provide federally mandated disclosures to consumers. If a consumer agreed, electronic disclosures could be provided with few other requirements. Proposed rules were published for Regulations B, M, Z, and DD (in this memorandum, referred to collectively as “the 1998 proposals”); and an interim rule was issued for Regulation E in response to an earlier proposal.¹ The covered disclosures include: cost information for lease and credit transactions, account-opening disclosures and periodic statements of account activity for deposit and credit card accounts, notice of a change in interest rate or other account terms, the credit denial or other adverse action notice for loan applications, and billing error and other notices of consumers’ rights. A list of affected disclosures is contained in Attachment A, beginning at page 18.

In response to the 1998 proposals, the Board received approximately 200 comment letters, mostly from financial institutions and their trade associations. Most industry representatives supported the use of electronic communication, but voiced considerable concern about the general nature of the proposals (what the staff characterizes as the “minimalist” approach). Overall, they requested more guidance on how to comply with the disclosure requirements in particular transactions and circumstances. Consumer advocates expressed concern that the consumer protections in the proposals were inadequate.

¹ The approach taken in the 1998 proposals and the interim rule was consistent with the approach taken under Regulation CC (Expedited Funds Availability). In 1997, the staff commentary to Regulation CC was revised to state that funds availability disclosures may be provided electronically if the customer agrees. Comments 229.13(g)-1 and 229.15(a)-1.

Based upon further analysis and a review of the comments received on the 1998 proposals, the staff recommends that the Board publish for comment proposed rules on a modified approach for the electronic delivery of disclosures to consumers.² The modified proposals presented for Board consideration are more detailed than the 1998 proposals. They provide specific guidance for institutions that choose to use electronic communication to deliver disclosures to consumers. They are also intended to ensure effective delivery of those disclosures when the Internet or another electronic medium is used.

Though detailed, the staff believes, the modified proposals provide sufficient flexibility for compliance.³ The proposals recognize that disclosures are provided under various circumstances that may warrant different treatment under the rules. Some disclosures are generally available to the public--for example, bank account fee schedules and credit card costs in solicitations. Under the modified proposals, such disclosures could be made available electronically without obtaining a consumer's consent.

² No revisions are proposed to Regulation CC.

³ The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and, in some cases, business credit applicants. For ease of reference, this memorandum uses the terms "financial institution," "institution," and "consumer."

Some disclosures are made to consumers who are transacting business in person, as is typically the case today for mortgage loan closings, automobile loans and leases, and door-to-door credit sales. Under the modified proposals, these disclosures generally would have to be made in paper form.

All other disclosures could be delivered electronically if the consumer consents. The modified proposals set forth the information that would have to be given to consumers and a requirement that consumers affirmatively signify their consent. A financial institution that complied with these requirements would effectively have a safe harbor from claims that the consumer did not exercise "informed consent," and disclosures could be delivered electronically.

Under the modified proposals, the required information would be provided to consumers through a standardized statement that would specify the requirements for receiving and retaining the disclosures electronically. An institution would have the option of delivering disclosures to an e-mail address designated by the consumer or making the disclosures available at another location such as the institution's website location. If disclosures are made available at a website, the financial institution would have to send a notice alerting the consumer when the information has been posted.

Some industry representatives have requested that the Board issue interim rules to permit electronic disclosures to be delivered immediately under the basic framework of the 1998 proposals. Consumer groups and others oppose interim rules, citing concerns about the minimalist approach of the initial proposals.

The staff recommends that the Board publish an interim rule under Regulation DD (Truth in Savings) for the limited purpose of allowing consumers to elect to receive, by electronic means, disclosures for periodic statements of deposit account activity. (Other types of disclosures raise more difficult issues that the staff believes would be better addressed in the draft modified proposals.) Such a rule would be consistent with the existing interim rule under Regulation E, which permits electronic delivery of disclosures for fund transfers initiated through home banking programs, for example. Institutions commonly provide, in a single periodic statement, disclosures that comply with both Regulation E and Regulation DD; thus, issuing a comparable interim rule for periodic statements under Regulation DD will allow institutions to implement electronic delivery of deposit account statements using a single set of procedures, and avoid the cost associated with printing and mailing the information in paper form.

A draft proposed rule for Regulation E is contained in Attachment D, beginning at page 25. Draft proposed rules for Regulations B, M, Z, and DD, which conform to the rules being proposed for Regulation E and are available for review, would also be published. A draft interim rule for Regulation DD is contained in Attachment E, beginning at page 75.

DISCUSSION

I. Background on Rulemaking to Permit the Electronic Delivery of Disclosures

In May 1996, the Board issued a proposed rule to permit electronic delivery of disclosures that Regulation E requires to be given in writing. The proposal would have allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, in March 1998 the Board issued an interim rule under Regulation E and published proposals under Regulations B, M, Z and DD. The 1998 proposals and the interim rule were similar to the May 1996 proposal except that a consumer was not entitled to a paper copy. The 1998 proposals permitted the use of electronic disclosures "if the consumer agrees." Whether the parties had an agreement was to be determined by state law.

II. Summary of Views from Comment Letters, Consumer Advisory Council, and Others

The Board received approximately 200 comment letters on the 1998 proposals and interim rule. The majority of comments were submitted by financial institutions and their trade associations. Industry representatives generally supported the use of electronic communication, but they voiced considerable concern about the general nature of the proposals and requested more guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were particularly concerned about the concept of consumer "agreement" because the rules did not specify a method for establishing that an agreement was reached; state law standards would generally apply. Companies engaged in nationwide commerce feared that compliance under a state law standard for determining "agreement" would be overly complicated. Where consumers reside in one state and institutions' websites or electronic hubs originate in another state, there might be uncertainty over which state's laws apply. In their view, the rule would require these institutions to develop standards and practices that would be deemed to be an "agreement" in all jurisdictions. Other commenters were concerned about potential liability if the institution's procedures were challenged as insufficient to constitute an "agreement."

Consumer advocates generally opposed the Board's proposals. They believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. They noted that some consumers are likely to consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. Consumer advocates also questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and feared that the goals of federally mandated disclosures would be lost. Democratic members of the House and Senate Banking Committees have expressed views and concerns similar to those stated by consumer advocates.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile financing and leasing, short-term "payday" loans, and home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

Consumer advocates also voiced concerns about the integrity and security of electronic disclosures. Transactions memorialized in paper form may be protected from alterations by signatures, notary seals, and other established verification procedures. Consumer advocates asserted that potential alteration of electronic documents could impede consumers' abilities to enforce rights under consumer protection laws.

The Board's Consumer Advisory Council considered the matter of the electronic delivery of disclosures in March and June 1998 and in June 1999. Many shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They feared that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

III. Modified Approach for the Electronic Delivery of Disclosures

After a review of the comments and discussions with industry and consumer representatives and others, and upon further analysis, the staff has modified the proposals on the electronic delivery of disclosures. The modified proposals generally continue to offer a consistent approach among the regulations for providing disclosures electronically. In light of the significant revisions made to the March 1998 proposals, the staff believes that additional public comment is likely to be beneficial, and recommends that the Board publish the modified proposals for public comment instead of adopting final rules. The 1998 Regulation E interim rule would remain in effect.

A. Standardized Disclosure Format for Obtaining Consumer Consent to the Electronic Delivery of Disclosures

The modified proposals provide specific procedures--using a standardized disclosure format--for obtaining consumers' consent to receive electronic disclosures. Institutions would:

- C Identify the types of disclosures consumers would receive (monthly account activity statements or change-in-term notices, for example) and specify whether or not consumers also have the option to receive disclosures in paper form;
- C Identify the address or location for receiving information required by the Board's regulation; and if disclosures will be posted to a location such as the institution's Internet website, tell consumers how long the disclosures will be posted, and whether the information will be available after that time;
- C Specify any technical requirements for receiving and retaining disclosures and provide consumers a means for contacting the institution (for example, an e-mail address or toll-free telephone number) if they experience difficulties or have questions; and

C Provide a means for consumers to respond affirmatively, to confirm that they agree to receive the disclosures electronically and that their computer equipment meets the technical requirements.

Certain disclosures that are available to the general public (such as deposit account rates and fees and credit card costs) could be delivered electronically without following these procedures.

This approach addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, consumers must be told the specific disclosures that will be delivered electronically and whether those disclosures are also available in paper form. Consumers must respond affirmatively and, in most cases, provide an e-mail address. Technical requirements must be stated, and consumers must affirm that their computer equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them. Accordingly, consumers should be able to make informed judgments about their ability to access the information electronically. Model forms would guide financial institutions in presenting the electronic communication disclosure in a clear and conspicuous format. Samples of completed disclosure statements are in Attachment D of this memorandum at pages 68 and 69.

Institutions would be required to notify consumers about changes to information previously disclosed concerning electronic communication--for example, if upgrades to computer software are required. Institutions also would be required to obtain the consumer's consent before providing additional disclosures by electronic communication unless the institution previously disclosed the possibility of additional types of electronic disclosures at the time the consumer's consent was first obtained.

B. Timing, Format, and Retention of Disclosures Provided Electronically

Electronic disclosures would have to meet the regulation's existing format, timing, and retention requirements. Disclosures must be clear and conspicuous. With regard to timing, for a transaction that will occur on-line, if the law requires that a disclosure must be given before the consumer becomes contractually obligated, the institution must display the disclosures on the screen before the consumer completes the transaction. To illustrate, if a consumer applies on-line for a home-secured line of credit, the application could not be submitted for processing until the consumer has the opportunity to see the Regulation Z (Truth in Lending) application disclosures on-line. This rule is intended to ensure that consumers have an opportunity to review the disclosures within the time period established by the statute--in this case, when an application is provided.

Electronic disclosures would have to be provided in a format that allows the consumer to retain them by printing or downloading the information. Consumer advocates and others expressed concern that because electronic documents can be altered more easily than paper documents, consumers' ability to use electronic disclosures to protect their rights in a dispute might be impaired (for example, where the institution's copy of a disclosure reflects different terms than those reflected in the consumer's copy). Issues involving the integrity and security of electronic documents go beyond the scope of the Board's rulemaking; they are relevant to electronic commerce generally. Still, possible approaches to address these concerns would be raised in supplementary information accompanying the proposals. Comment would be solicited on the feasibility of requiring financial institutions to provide disclosures in a format that cannot be altered without detection, or to have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of using independent certification authorities to verify documents.

C. Delivery of Disclosures to Electronic Mail Addresses or Other Locations

Financial institutions and others would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as a website. Currently, because of security and privacy concerns associated with data transmissions, many institutions choose to provide disclosures at password-protected areas within their websites, where the consumer may retrieve them under secure conditions.

Under the draft modified proposals, institutions that post disclosures at their website must separately notify consumers when the disclosures are available at the website. This rule addresses the concern that consumers would otherwise have the burden of continuously monitoring websites to determine when or whether updated information (such as monthly billing statements or change-in-term notices) is available concerning their accounts. The information would have to remain available for at least 90 days. The 90-day rule would provide protections to consumers under a variety of circumstances such as when a consumer may not be able for an extended period of time to access the information due to illness, travel, or computer malfunction.

D. Paper Copies for Consumer Financial Transactions Conducted in Person

Today, most home-secured loans and some other transactions are consummated in person due to legal requirements such as the need to obtain authenticated signatures. The draft modified proposals generally provide that if a consumer transacts business in person (to open a deposit account, to lease or finance the purchase of an automobile, or to close a home-secured loan, for example) disclosures must be in paper form. To illustrate, if a consumer signs an agreement to lease an automobile in person, the accompanying Regulation M (Consumer Leasing) disclosure must also be in paper and could not be merely shown to the consumer on a computer screen at the dealer's desk. Similarly, if a consumer establishes an overdraft line of credit in person, the Regulation Z (Truth in Lending) account-opening disclosures must be provided in paper form. Consumers who close mortgage loans in person would receive Regulation Z cost disclosures and a notice of their right to rescind certain home-secured loans in paper form.

Most institutions would likely provide paper disclosures for in-person transactions. The proposed rule seeks to prevent potential abuses in such transactions where there is an expectation that consumers would receive paper copies of disclosures along with paper copies of other documents evidencing the transaction, and there would seem to be little benefit to delivering electronic disclosures.

E. Consumers' Use of Electronic Communication

In some cases, consumers are required to communicate in writing with institutions, for example, to give notice of an error on their account. Under the draft modified proposals, consumers who have agreed to receive electronic disclosures would generally be permitted to provide electronically notices that are necessary to preserve the consumers' rights under the regulations. Financial institutions could not require a paper notice or confirmation; they could, however, specify a particular electronic address for receiving the notices. This differs somewhat from the 1998 proposals, which would have allowed a financial institution to require a consumer to confirm in paper form a billing error claim under Regulation E.

F. Rules Requiring a Consumer's Signature

Some regulations have signature requirements. For example, Regulation E requires that preauthorized electronic fund transfers be authorized by a writing signed or similarly authenticated by a consumer; Regulation Z requires consumers to sign or initial a request for optional credit insurance. The Board indicated in its 1996 review of Regulation E that, in the context of a home banking system, any electronic authentication method should provide the same assurance as a signature in a paper-based system. Supplementary information accompanying the 1996 revisions to Regulation E and the interim rule adopted in 1998 cited security codes and digital signatures as examples of authentication devices. Some commenters expressed concern that the Board appeared to approve only those methods, even though other alternatives exist for verifying a consumer's identity. Commenters also asked for further guidance on electronic authentication methods.

The draft modified proposals limit guidance on electronic authentication to the general principle that a system must use an authentication device that provides the same assurance as a written signature. The staff believes this approach will avoid unduly influencing the development of certain types of electronic commerce by overly specific requirements and will encourage innovation and flexibility.

IV. Interim Rule under Regulation DD Permitting the Electronic Delivery of Periodic Statements

Some industry representatives have requested that, pending the issuance of final rules, the Board issue interim rules to permit electronic disclosures to be delivered under the basic framework of the 1998 proposals. Consumer groups and others oppose interim rules, citing their concerns about the minimalist approach of those proposals. The Board has received correspondence from members of Congress supporting each of these opposing views. Some members believe any delay in adopting a final rule impedes electronic commerce; others believe that the 1998 proposals fall short in providing adequate consumer protections, and that the Board should move cautiously in permitting the electronic delivery of disclosures for all types of consumer financial services transactions. (See letters from member of Congress in Attachment B, beginning at page 21, and Attachment C, beginning at page 24.)

The staff recommends issuance of an interim rule under Regulation DD (Truth in Savings) for the limited purpose of allowing consumers to elect to receive periodic statements of deposit account activity by electronic means. (Other required disclosures, which raise more difficult issues, are addressed in the draft modified proposals.) The interim rule would be consistent with the existing interim rule under Regulation E that permits electronic delivery of disclosures for electronic fund transfers initiated through home banking programs, for example. Institutions commonly provide in a single document periodic statements under Regulation E and

Regulation DD; thus, issuing a comparable interim rule for periodic statements under Regulation DD will allow institutions subject to both regulations to implement electronic delivery of deposit account statements with a single set of procedures, and avoid the cost of printing and mailing the information in paper form.

CONCLUSION

The staff recommends that the Board publish for comment modified proposals under Regulations B (Equal Credit Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings) to permit institutions to provide federally mandated disclosures to consumers electronically. The staff also recommends issuance of an interim rule under Regulation DD that would allow deposit customers to elect to receive disclosures on periodic statements electronically, effective on publication.

DISCLOSURES THAT MAY BE DELIVERED BY ELECTRONIC COMMUNICATION

Regulation B (Equal Credit Opportunity)

C Notice of the right to receive a copy of an appraisal

C Notice of a credit denial or other adverse action

Regulation DD (Truth in Savings)

C Account-opening disclosures

C Notice of change in account terms

C Notice of maturity for certificates of deposit

C Periodic statements of account activity

Regulation E (Electronic Fund Transfers)

C Initial disclosures

C Notice of change in account terms

C Annual error resolution notice

C Periodic statements of account activity

C Receipts at electronic terminal

C Notice of preauthorized transfer

C Written signed authorizations for recurring debits or credit to or from consumer account

C Notices of error (from consumer)

C Stop payment order (from consumer)

C Written confirmation of oral error notice or stop payment order

Regulation M (Consumer Leasing)

- C Disclosure at lease signing including information about payments, early termination, purchase options, and fees such as taxes and insurance
- C Disclosures when leases are renegotiated or extended

Regulation Z (Truth in Lending)

Open end credit

- C Disclosures on or with credit card applications and solicitations (including information about balance calculation methods, grace periods, rates, and fees)
- C Disclosures about home-secured lines of credit (at time application is provided to consumer)
- C Brochure on home-secured lines of credit (When Your Home is on the Line)
- C Account-opening disclosures
- C Periodic statements of account activity
- C Detailed annual disclosure of rights and procedures for resolving errors (or alternative short-form disclosures on periodic statements)
- C Notice of change in account terms
- C Disclosures on renewal of credit or charge card (separate notice or printed on periodic statements)
- C Notice of change in credit card insurance provider
- C Notices of a billing error (from consumer)
- C Acknowledgment of billing error notice (from creditor)
- C If error occurred, notice of correction
- C If error occurred, explanation
- C Notice of right to rescind a home-secured loan (from creditor)

C Notice of rescission (from consumer)

C Waiver of right to rescind (from consumer)

Closed end credit

C Disclosures for adjustable rate mortgages (ARMs) (at time application is provided)

C Brochure providing information on ARMs

C Annual notice of ARM rate adjustment

C Estimated cost disclosures (three days after application)

C Loan cost and term disclosures upon being obligated (rate information, finance charge, late payment fees, security interest, payment schedule)

C Disclosures for reverse mortgages

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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510-6076

June 9, 1999

The Honorable Alan Greenspan
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Electronic Disclosures

Dear Chairman Greenspan:

Last year, the Federal Reserve Board issued proposed regulations that would drastically change the disclosure requirements of five of the most important federal consumer protection statutes that we have today: the Truth in Lending Act, the Consumer Leasing Act, the Truth in Savings Act, the Electronic Funds Transfer Act, and the Equal Credit Opportunity Act. The proposal would substitute an untried system of electronic disclosures for a proven system of paper disclosures, thereby making it extremely uncertain that the disclosures required by the statutes would actually be received and retained.

We agree that regulators should try to accommodate computer savvy consumers who initiate banking, credit card, and other financial transactions on-line by permitting electronic disclosures pursuant to the relevant statutes. However, we believe the Board's proposal, as well as the new staff draft recently circulated, are both fundamentally flawed. By allowing financial institutions to offer electronic in lieu of written disclosures, whether or not consumers even have a computer, the Board's proposal puts in jeopardy a system that is working effectively for the vast majority of American consumers.

The Federal Reserve's proposal is based on the questionable assumption that all or most consumers have personal computers and printers, are computer literate, and handle their financial transactions on-line. This is simply not true. Although many consumers have personal computers in their homes and are becoming computer literate, and some have begun engaging in financial transactions on-line, they comprise a small minority.

Mr. Alan Greenspan
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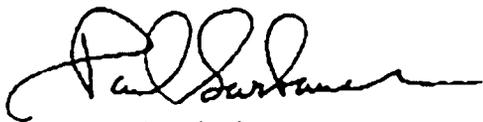
The proposal invites fraud and abuse of the tens of millions of consumers today who do not have personal computers, e-mail, or the Internet, are not computer-savvy, and who prefer and rely on paper documents. The proposal would be particularly harmful for the many vulnerable, financially unsophisticated consumers who would be the targets of predatory and abusive tactics. Such tactics include those who solicit business door to door and bring a laptop computer to make the "early" TILA disclosures electronically; and lenders who change important dates or other contract terms which the homeowner could only cursorily scan when trying to read a computer screen at the lender's office.

We strongly oppose a proposal that may force consumers more generally to forego written disclosures and may result in consumers never seeing critical information concerning their mortgage loans, car loans, car leases, credit cards and bank accounts. This proposal is also opposed by the leading consumer groups.

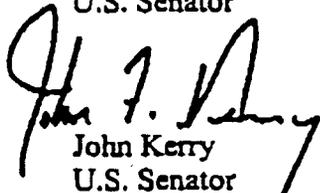
The simple solution - and one we would support - is a rule that would permit financial institutions to make electronic disclosures in limited cases to those computer-savvy consumers who initiate financial transactions electronically on their home computers. In these cases, the integrity of the documents must be assured and the creditors must establish that a consumer has the capacity to receive disclosures electronically on an ongoing basis and in a timely manner.

In sum, we believe the Board should move cautiously and carefully on this issue.

Sincerely,



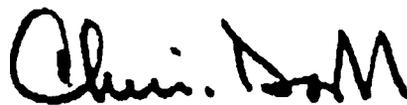
Paul S. Sarbanes
U.S. Senator



John Kerry
U.S. Senator



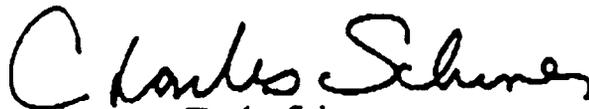
Jack Reed
U.S. Senator



Christopher J. Dodd
U.S. Senator

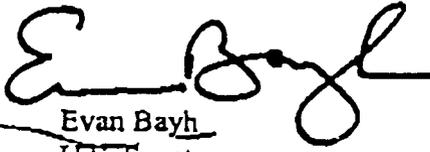


Tim Johnson
U.S. Senator

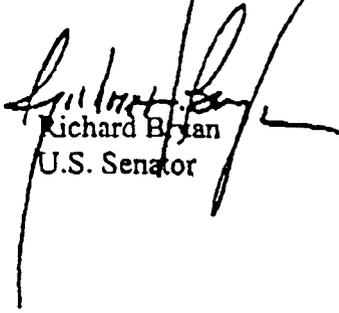


Charles Schumer
U.S. Senator

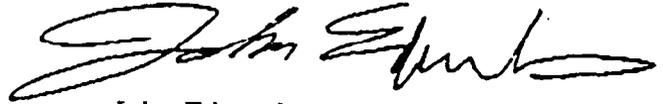
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U.S. Senator



Richard Bryan
U.S. Senator



John Edwards
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Congress of the United States
House of Representatives
Washington, DC 20515
May 19, 1999

The Honorable Alan Greenspan
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Chairman Greenspan:

It has come to my attention that the Federal Reserve Board may delay the release of its final electronic disclosure initiatives, which would permit a financial institution to electronically furnish information that currently must be delivered in paper form under several of the Board's regulations, including Regulation E (Electronic Fund Transfers) and Regulation Z (Truth in Lending). I had hoped that these important proposals would be finalized soon, but have been informed that the Board staff now is considering publishing a revised version of these proposals for additional comment. Such a process likely would mean that finalization of these initiatives would be delayed for a considerable period of time.

As you know, I have been involved in congressional efforts to facilitate electronic commerce as a means to promote economic efficiency and productivity, and consumer choice and convenience. The success of electronic commerce depends on the ability of companies to establish and develop customer relationships on-line. For this to occur, it is essential that we eliminate paper in creating these relationships. Timely release of the Board's electronic disclosure initiatives could play a significant role in promoting the development of e-commerce, while further delay could chill such development, to the detriment of consumers and financial institutions alike.

If the finalization of these initiatives will be further delayed by the publication of more proposals for additional comment, I urge the Board to consider the concurrent release of interim rules permitting such electronic disclosures, as the Board did with its earlier release regarding Regulation E electronic disclosures. Such interim rules would help fill the present void that unnecessarily impedes current financial institution efforts to implement their on-line banking initiatives.

I look forward to hearing from you at your earliest convenience about the status of these initiatives and the feasibility of such interim rules, and I appreciate your attention to this matter.

Sincerely,

David Dreier

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R-**]**

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation E, which implements the Electronic Fund Transfer Act. The Board previously published an interim rule that permits financial institutions 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. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the interim rule (and the proposals), the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues. The interim rule remains in effect. The Board is also publishing for comment technical amendments involving error resolution notices.

DATES: Comments must be received on or before October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R-****, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the

security control room at all other times. The mail room and the security control room, both in the Board Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR §§ 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Michael L. Hentrel, Staff Attorney, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. 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., provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. 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 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. The Board's Regulation E (12 CFR part 205) implements the act.

The EFTA and Regulation E require a number of disclosures to be provided in writing, presuming that institutions 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, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communications for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the "interim rule"), 63 FR 4528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 4533, M (Consumer Leasing), 63 FR 4538, Z (Truth in Lending), 63 FR 4548, and B (Equal Credit Opportunity), 63 FR 4552, (collectively, the "March 1998 proposed rules"). The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and other persons. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the EFTA and Regulation E. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communications before an "agreement" is reached. They also

believed that promises of lower costs could induce consumers to agree to receive electronic disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to electronic disclosures, or to permit financial institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers are likely to consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and fear that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples as automobile financing and leasing, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales.). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of the agreement and consumers may need to offer electronic disclosures as

proof of the agreed-upon terms and enforce rights under consumer protection laws. The Council also discussed the integrity and security of electronic documents. Transactions memorialized in paper form may be protected from alterations by signatures, notary seals, and other established verification procedures. Thus, to assure that electronic documents have not been altered and that they accurately reflect the disclosures originally sent, consumer advocates recommended that the Board require electronic disclosures to be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the matter of the electronic delivery of disclosures in 1998 and again in 1999. Many shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They feared that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery.

II. Discussion of Proposed Revisions

Based on a review of the comments and upon further analysis, the Board is requesting comment on a modified proposed rule that is more detailed. It is intended to provide specific guidance for institutions that choose to use electronic communication to comply with Regulation E's requirements to provide written disclosures, and to ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with the electronic communication rules. The modified proposal recognizes that some disclosures may warrant different treatment under the rule. Where written disclosures are made to consumers who are transacting business in person, these disclosures generally would have to be made in paper form.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, financial institutions would have to provide specific information about how the consumer can receive and retain electronic disclosures--through a standardized disclosure statement--before obtaining consumers' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, financial institutions would be permitted to use electronic communications. As a general rule an institution would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the institution by electronic means or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer contracts for an EFT service in person, initial disclosures must be given in paper form.

Financial institutions would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the institution's Internet website. If the disclosures are posted at a website location, financial institutions generally must notify consumers at an e-mail address about the availability of the

information. (Financial institutions may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the “clear and readily understandable” standard, and the existing format, timing, and retainability rules in Regulation E. For example, to satisfy the timing requirement, if disclosures are due at the time a consumer contracts for fund transfer services, they would have to appear on the screen before the consumer could complete the transaction.

Financial institutions generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A financial institution would not otherwise have a duty to confirm consumers’ actual ability to receive, print, or download the disclosures. Some commenters suggested that institutions should be required to verify delivery by return receipt. The Board solicits further comment on the need for such a requirement and the feasibility of that approach.

To satisfy the retention rules, the institutions must make disclosures available for printing or downloading by sending them to the consumer’s e-mail address or making them available at another location, such as a website, for 90 days. If the electronic terminal is in the financial institution’s control, however, institutions would have to ensure that the equipment displays the disclosures in a clear and readily understandable format and that they can be retained.

The integrity and security of electronic documents is an issue affecting electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain can not be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of

similar devices for electronic communications should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require financial institutions to retain evidence of compliance with Regulation E. Specific comment is solicited on the feasibility of requiring financial institutions to provide disclosures in a format that can not be altered without detection, or to have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of using independent certification authorities to verify documents.

The interim rule for Regulation E adopted by the Board in 1998 remains in effect. To the extent the interim rule is modified when final action is taken on the current proposal, the Board will provide a reasonable time period before the mandatory compliance date for any new requirements.

Elsewhere in today's Federal Register, the Board is publishing similar proposals for comment under Regulations B, M, Z and DD. In a separate notice the Board is publishing an interim rule under Regulation DD, which implements the Truth in Savings Act, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. The Board has assigned new docket numbers to the proposals published today, to assist commenters in making references to today's proposals.

III. Section-by-Section Analysis

Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

Section 205.4 General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

4(a)(2) Foreign Language Disclosures

To provide consistency among the regulations, the guidance currently contained in comment 4(a)-2 permitting disclosures to be made in languages other than English (provided they are available in English upon request) would be set forth in a new § 205.4(a)(2).

4(c) Electronic Communication

4(c)(1) Definition

The definition of the term "electronic communication" in the interim rule remains unchanged. Section 205.4(c)(1) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the interim rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile machine. Facsimile machines initially transmit information electronically, and the information may be received either in paper form or electronically, through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile machine

may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile machine, a financial institution should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 4(c)(1)-1 contains this guidance.

4(c)(2) Electronic Communication between Financial Institution and Consumer

1. Alternative Approach to a Financial Institution and Consumer “Agreeing” to Electronic Communication

Section 205.4(c)(2)(i) would permit financial institutions to provide disclosures using electronic communication, if the institution complies with provisions in new § 205.4(c)(3), discussed below.

2. Presenting Disclosures in a Clear and Readily Understandable Format

The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and readily understandable format as is the case for all written disclosures under the act and regulation. See § 205.4(a). Commenters generally supported this approach.

When consumers agree to receive disclosures electronically and they confirm that they have the equipment to do so, financial institutions generally would have no further duty to determine that consumers are able to receive the disclosures. Institutions do have the responsibility of ensuring the proper equipment is in place in instances where the institution controls the equipment. Proposed comment 4(c)(2)-1 contains this guidance.

3. Providing Disclosures in a Form the Consumer May Keep

As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the 1998 proposals and interim rule, a financial institution would satisfy this requirement by providing information that can be printed or

downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumer have an adequate opportunity to retain the information. Consumers communicate electronically with financial institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve EFTA disclosures presented on-screen. Therefore, when a financial institution provides disclosures by electronic communication, to satisfy the retention requirements, the institution must send the disclosures to a consumer's e-mail address or other location where information may be retrieved at a later date. Proposed comment 4(c)(2)-2 contains this guidance. In instances where an institution controls an electronic terminal used to provide electronic disclosures, an institution may provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the institution's website. See proposed comment 4(c)(2)-1. See also the discussion under § 205.4(c)(4), below.

4. Timing

Institutions must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. 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. The rule ensures that consumers have an opportunity to read important information about costs and other terms before becoming obligated for or using the service.

To illustrate the timing requirements for electronic communication, assume that an existing customer of a bank is interested in signing up for an on-line bill-payment service and uses a personal computer at home to access the bank's website on the Internet. The consumer receives disclosures from the bank about the use of electronic communication (§ 205.4(c)(3) disclosure

discussed below) and responds affirmatively. If the bank's procedures permit the consumer to sign up for and use the EFT service at that time, initial disclosures required under § 205.7 would have to be provided before the consumer becomes obligated for the service (or before the first transaction). Thus, the disclosures must automatically appear on the screen or the program must require the consumer to access the information before continuing. The timing requirements for providing initial disclosures would not be met if, in this example, the bank permitted the consumer to sign up for and immediately use an EFT service and sent initial disclosures to an e-mail address after the consumer became obligated for the service. Proposed comment 4(c)(2)-3 contains this guidance.

On the other hand, assume that the institution uses procedures that delay processing of the consumer's request for the EFT service until the required disclosures have been delivered by e-mail. In that case the information would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must be given the opportunity to receive the disclosures before signing up for the service or before the first transaction.

4(c)(2)(ii) In-Person Exception

The proposal contains an exception to the general rule allowing information required by Regulation E to be provided by electronic communication; in these cases, paper disclosures would be required. The exception, contained in § 205.4(c)(2)(ii), seeks to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is an expectation that consumers would have to be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 205.4(c)(2)(ii), if a consumer contracts for an EFT service in person, the financial institution must provide initial disclosures in paper form. For example, if a consumer signs up for an ATM card while opening an account at a financial institution, initial disclosures are required before the first transaction (or before the consumer otherwise becomes obligated) and they must be provided in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. Of course, an institution also complies if a consumer signs up for an electronic service on the Internet and is sent disclosures electronically at that time, even though the institution's procedures requires the consumer to visit the institution at a later time to complete the transaction (for example, to complete a signature card). Proposed comment 4(c)(2)(ii)-1 contains this guidance.

4(c)(3) Disclosure Notice

Section 205.4(c)(3) would be added to identify the specific steps required before an institution could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms A-6 and A-7, and Sample Forms A-9 and A-10 are published to aid compliance with these requirements.

4(c)(3)(i) Notice by Financial Institution

Section 205.4(c)(3)(i) outlines the information that financial institutions must provide before electronic disclosures can be given. The notice must: (1) describe the information to be provided electronically and specify whether the information is also available in paper form or whether the electronic fund transfer service is only offered with electronic disclosures; (2) identify the address or location where the information will be provided electronically; and if it is to be available at a location other than the consumer's electronic address, how long the information will be available, whether it can be obtained once that period ends, and if so, how; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for

the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number or an electronic or a postal address for seeking assistance with technical or other difficulties. (See proposed comments 4(c)(3)(i)-1 and 4(c)(3)(i)-2.) The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

Under the proposal, these disclosures must be provided, as applicable, before the financial institution uses electronic communication to deliver any information required by the regulation. This approach addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must respond affirmatively by providing an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them. Thus, consumers should in fact be able to make informed judgments about their ability to access the information.

Some commenters requested clarification of whether a financial institution may use electronic communication to provide some required disclosures while using paper for others. The answer is yes; however, the disclosure given under § 205.4(c)(3)(i) must specify which EFTA disclosures will be provided electronically.

Commenters requested further guidance on a financial institution's obligation under the regulation if the consumer chooses not to receive information by electronic communication. A financial institution could offer a consumer the option of receiving disclosures in paper form, but it

would not be required to do so. A financial institution could establish accounts or services for which disclosures are given only by electronic communication. Section 205.4(c)(3)(i)(A) would require financial institutions to tell consumers whether or not they have the option to receive disclosures in paper form. Proposed sample disclosure statements in which the consumer has an option to receive electronic or paper disclosures (Form A-9) or electronic disclosures only (Form A-10) are contained in appendix A.

4(c)(3)(ii) Response by Consumer

Proposed § 205.4(c)(3)(ii) would require financial institutions to provide a means for the consumer to affirmatively indicate that information should be provided electronically. Examples include a "check box" on a computer screen or a signature (for requests made in paper form). The requirement is intended to ensure that consumers' agreement is established knowingly and voluntarily, and that agreement to receive electronic disclosures is not implied from consumers' use of the account or acceptance of general account terms. See proposed comment 4(c)(3)(ii)-1.

4(c)(3)(iii) Changes

Financial institutions would be required to notify consumers about changes to the information that is provided in the notice required by § 205.4(c)(3)(i)--for example, if upgrades to computer software are required. Proposed comment 4(c)(3)(iii)-1 contains this guidance.

The change-in-terms notice must include the effective date of the change and be provided before that date. Comment 4(c)(3)(iii)-2 would provide that the notice must be sent a reasonable period of time before the effective date of the change. Although the number of days that constitutes reasonable notice may vary, depending on the type of change involved, the comment would provide institutions with a safe harbor: Fifteen days' advance notice would be considered a reasonable time in all cases. The same time period is stated in similar proposals under Regulations B, Z, and DD published in today's Federal Register. Comment is requested on whether a safe

harbor of 15 days is an appropriate time period, and whether a uniform period for changes involving electronic communication is desirable. An alternative approach would adopt notice requirements that are consistent with change-in-term requirements under the various regulations. Under this approach, for example, the safe harbor would be 21 days under § 205.8 for Regulation E, 15 days under § 226.9 for Regulation Z, and 30 days under § 230.5 for Regulation DD.

If the change involves providing additional disclosures by electronic communication, institutions generally would be required to provide the notice in § 205.4(c)(3)(i) and obtain the consumer's consent. The notice would not be required if the institution previously obtained the consumer's consent to the additional disclosures in its initial notice by disclosing the possibility and specifying which disclosures might be provided electronically in the future. Comment is specifically requested on the benefits and costs associated with this approach. A list of additional disclosures may be necessary to ensure that consumers' consent is informed and knowing. The additional information about potential electronic disclosures, however, may be more confusing than helpful to some consumers.

4(c)(4) Address or Location to Receive Electronic Communication

Proposed § 205.4(c)(4) identifies addresses and locations where institutions using electronic communication may send information to the consumer. Under the proposal, institutions may send information to a consumer's electronic address, which is defined in proposed comment 4(c)(4)(i)-1 as an e-mail address that the consumer also may use for receiving communications from parties other than the financial institution. For notices of preauthorized transfers, for example, a financial institution's responsibility to provide notice under §205.10(d) will be satisfied when the information is sent to the consumer's electronic address in accordance with the technical instructions provided by the institution under proposed § 205.4(c)(3)(i)(C). As previously discussed above, however, there may be some circumstances when sending disclosures to a consumer's electronic address (other than periodic statements) will not satisfy the timing requirements of the regulation and they must also appear on-screen.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of institutions may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Accordingly, § 205.4(c)(4) also clarifies how a financial institution would comply with the regulation's delivery requirements when information is provided electronically to a consumer at a location other than the consumer's electronic address. The institution must take an additional step to notify the consumer when the information becomes available and identify the account involved. (See proposed comment 4(c)(4)(ii)-1).

This approach ensures that a consumer would not be required to check an institution's website repeatedly to learn whether the institution posted a change in a term that affects an EFT service used by the consumer. Under the proposal, this notice must be sent to an electronic address identified by the consumer. However, the financial institution may, at its option, permit the

consumer to designate a postal address. A proposed model form (Model Form A-8) is published below.

The requirements of the regulation would be met only after the required information is posted on the website and the consumer is notified of its availability in a timely fashion. For example, financial institutions must provide a change-in-terms notice to consumers at least 21 days in advance of the change. (12 CFR 205.8(a).) For a change-in-terms notice posted on the Internet, an institution must both post the notice and notify consumers of its availability at least 21 days in advance of the change.

The Board believes the proposed notice in § 205.4(c)(4)(ii) effectively responds to the comments received on the interim rule. Guidance accompanying the interim rule provided that an institution would not meet delivery requirements by simply posting information to an Internet site such as a financial institution's "home page" without appropriate notice on how consumers can access the information. The revised proposal responds to commenters' requests to provide further guidance on the issue.

Commenters (primarily representing depository institutions) wanted to retain the flexibility of posting disclosures on an Internet website. They did not object to providing a separate notice alerting consumers about the disclosures' availability; they believe the compliance burden would be minimal. The present proposal reflects the Board's belief that it would be inconsistent with the goals and purposes of the law to require a consumer to initiate a search--for example, to search the website of each financial institution with which an account is held--to determine whether a disclosure has been provided. It addresses concerns expressed by consumer advocates and others that the mere posting of information inappropriately places the responsibility to obtain disclosures on consumers, and undermines the purpose of the delivery requirements of the regulation.

Section 205.4(c)(4) would set a minimum time period of 90 days that institutions must post information sent to a location other than the consumer's designated electronic address; the provision responds to commenters' request for guidance. Proposed comment 4(c)(4)(ii)-2 contains this guidance. There are a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. The Board is requesting comment on the incremental cost of retaining the information for that period (if any), including suggestions for less burdensome alternative means for providing consumers continuing access to disclosures.

4(c)(5) Consumer Use of Electronic Communication

Proposed § 205.4(c)(5) would clarify consumers' ability to provide certain information to financial institutions by electronic communication. Regulation E provides that a consumer may allege an error or stop payment of a preauthorized EFT by notifying the institution orally or in writing, and that the institution may require written confirmation of a notice of error or oral stop-payment order. The revised proposal differs from guidance accompanying the interim rule; under the proposal, consumers generally would have the option to use electronic communication for these written notices (including written confirmations) if the consumer has chosen to receive information by electronic communication. Because the consumer's electronic communication serves as written confirmation, the financial institution could not also require paper confirmation. Institutions could, however, specify a particular electronic address for receiving the notices.

In issuing the March 1998 interim rule, the Board stated that financial institutions could require paper confirmation of electronic notices in the two instances where the regulation allows written confirmation--stop-payment notices and notices of error. This approach was consistent with guidance provided in the May 1996 proposed rule, where 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 upon request under the May 1996 proposal).

Views were mixed on whether financial institutions should be permitted to require paper confirmations of electronic notices. Some commenters stated that paper confirmations protect both the consumer and the financial institution. Many commenters requested that the Board allow financial institutions to request paper confirmations for certain communications; in some cases a paper confirmation may be more secure. Consumer advocates and other commenters believed it would be unfair to require paper confirmation of an electronic communication from consumers who receive electronic communication from a financial institution.

Based upon the comments received and further analysis, subject to certain limitations discussed below, the Board is proposing that consumers be permitted to provide electronically any information that a consumer is required to provide a financial institution to preserve the consumer's rights under the regulation, such as the stop-payment notice and the notice of error. If an institution uses electronic communication to provide disclosures to customers on a continuing basis, such as change-in-terms notices or periodic statements, it is appropriate to allow consumers to use electronic communication to provide notices to the institution. However, if an institution limits its use of electronic communication to the delivery of initial disclosures (that is, if all subsequent disclosures regarding the EFT service are provided in paper form), institutions would not be required to accept electronic communication from customers. The Board requests specific comment on whether additional guidance is needed regarding consumers' use of electronic communication for oral communications permitted under the regulation.

4(c)(5)(ii) Institution's Designation of Address

Section § 205.4(c)(5)(ii) would provide that an institution may designate in advance the electronic address that must be used by a consumer for sending electronic communications as permitted by § 205.4(c)(5)(i).

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

The Board solicits comment on three proposed model forms and two sample forms for use by financial institutions to aid compliance with the disclosure requirements of § 205.4(c)(3) and § 205.4(c)(4). Model Forms A-6 and A-7 would implement § 205.4(c)(3), regarding the notice that financial institutions must give prior to using electronic communication to provide required disclosures. Model Form A-8 would implement § 205.4(c)(4), regarding notices to consumers about the availability of that information at locations such as the financial institution's website. Use of any modified version of these forms would be in compliance as long as the institution does not delete information required by the regulation or rearrange the format in a way that affects the substance, clarity, or meaningful sequence of the disclosure. For example, institutions could modify the model notice (A-8) to identify its periodic statements by a reference to their frequency ("monthly" or "quarterly") or by a reference to the account in sufficient detail for the consumer to identify.

Sample Form A-9 illustrates the disclosures under § 205.4(c)(3) for a transaction account. The sample is based on the assumption that the institution also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form A-10 is based on the assumption that consumers must accept electronic disclosures if they want to contract for the for electronic fund transfer service.

Additional Issues

1. Signature Requirements

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 Official Staff Commentary to Regulation E states that an example of a consumer's authorization that is not in the form of a signed writing but is instead "similarly authenticated" is a consumer's authorization under § 205.10(b) for using a home-banking system. The Board indicated in the supplementary information to the 1996 final rule that the authentication method should provide the same assurance as a signature in a paper-based system. Since the publication of the amended regulation and accompanying commentary, the Board has been asked to give further guidance on this issue. In the supplementary information to the March 1998 interim rule, the Board expressed its interest in learning about other ways in which authentication in an electronic environment might occur in lieu of a consumer's signature.

Some commenters provided alternatives for verifying a consumer's identity, including alphanumeric codes (combinations of letters and numbers) or combinations of unique identifiers (such as account numbers combined with a number representing algorithms of the account numbers). In the supplementary information to the March 1998 interim rule, the Board cited security codes and digital signatures as examples of authentication devices that might meet the requirements of authentication and signatures. Many commenters stated their concern that the Board approved only these or similar methods. These commenters urged the Board to take a flexible approach to this requirement. They suggested that the Board's implied or explicit endorsement of any particular method could hinder the development of new technologies. Further, these commenters requested that the Board take a "wait and see" approach to this issue, to allow the industry to develop alternatives that will result in more security for consumers.

The Board is mindful of the need to avoid unduly influencing the development of electronic commerce by overly specific regulation. Accordingly, to encourage innovation and flexibility, the Board will limit its guidance to the general principle that a home-banking or other electronic communication system must use an authentication device that provides the same assurance as a signature in a paper-based system.

2. Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under § 205.12(b) of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide financial institutions with the option of giving required disclosures by electronic communication as an alternative to paper. Because paper disclosures continue to satisfy all regulatory requirements, there is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board will, however, review preemption issues that are brought to the Board's attention. Section 205.12(b)(1) outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, financial institution, or other interested party following publication of a final rule regarding electronic communication.

3. Technical Amendment to Error Resolution Notice

In September 1998, the Board revised the time periods for investigating alleged errors involving point-of-sale and foreign-initiated transactions. (63 FR 52115, September 29, 1998.) The amendments to § 205.11 require financial institutions to provisionally credit an account within 10 business days (rather than 20). At the same time, the Board extended the time periods to provisionally credit funds and investigate claims involving new accounts. The rule permits institutions to take up to 20 business days to provisionally credit funds and up to 90 calendar days

to complete the investigation. The Board proposes to revise the model error resolution notices contained in Appendix A (Forms A-3 and A-5) to conform with § 205.11 as amended.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R-****, 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 ½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act and section 904(a)(2) of the EFTA, the Board has reviewed the proposed amendments to Regulation E. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A financial institution's use of electronic communication to provide disclosures required by the regulation is optional. The proposed 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.

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 may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100-0200.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR Part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of the Regulation E and the Electronic Fund Transfer Act (EFTA). The revised requirements would be used 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. Institutions are also required to retain records for twenty-four months. 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 proposed revisions would allow institutions the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of financial institutions. With respect to state member banks, it is estimated that there are 851 respondent/recordkeepers and an average frequency of 85,808 responses per respondent each year. Therefore the current amount of annual burden is estimated to be 462,839 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. Section 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between institutions and the customer.

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

List of Subjects

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

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation E. New language is shown inside bold-faced arrows, deletions inside bold-faced 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 would continue to read as follows:

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

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

§ 205.4 General disclosure requirements; jointly offered services.

(a) <(1)= Form of disclosures. * * *

<(2) Foreign language disclosures. Disclosures may be made in languages other than English, provided they are available in English upon request.=

* * * * *

<(c) Electronic communication. (1) Definition. Electronic communication means a message transmitted electronically between a financial institution and a consumer 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. (i) General.

Except as provided in paragraph(c)(2) (ii) of this section, a financial institution that has complied with paragraph (c)(3) of this section may provide by electronic communication any information required by this regulation to be in writing.

(ii) In-person exception. When a consumer contracts for an electronic fund transfer service in person, the disclosures required under § 205.7 must be provided in paper form, unless the consumer requested the service by electronic means and disclosures were obtained at that time.

(3) Disclosure notice. The disclosure notice required by this paragraph shall be provided in a manner substantially similar to the applicable model form set forth in Appendix A of this part (Model Forms A-6 and A-7).

(i) Notice by financial institution. A financial institution shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the electronic fund transfer service is only offered with electronic disclosures;

(B) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, whether it can be obtained once that period ends, and if so, how;

(C) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(D) Provide a toll-free telephone number or an address for seeking technical or other assistance related to electronic communication.

(ii) Response by consumer. A financial institution shall provide a means for the consumer to accept or reject electronic disclosures.

(iii) Changes. (A) A financial institution shall notify affected consumers of any change to the information provided in the notice required by paragraph (c)(3)(i) of this section. The notice must include the effective date of the change and must be provided before that date.

(B) In addition to the notice under (c)(3)(iii)(A), if the change involves providing additional disclosures by electronic communication, a financial institution shall provide the notice in paragraph (c)(3)(i) of this section and obtain the consumer's consent. A notice is not required if the institution's initial notice under (c)(3)(i) states that additional disclosures may be provided electronically in the future and specifies which disclosures could be provided.

(4) Address or location to receive electronic communication. A financial institution that uses electronic communication to provide information required by this regulation shall:

(i) Send the information to the consumer's electronic address; or

(ii) Post the information at a designated location such as a website, and send a notice to the consumer when the information becomes available. The information shall be available at the designated location for at least 90 days. The notice required by this paragraph shall identify the account involved, shall be sent to an electronic address designated by the consumer (or to a postal address, at the financial institution's option), and shall be substantially similar to the model form set forth in Appendix A of this part (Model Form A-8).

(5) Consumer use of electronic communication. (i) General. A consumer may use electronic communication to assert any right under § 205.10(c) and § 205.11 if the consumer has consented to receive information required by this regulation by electronic communication, except when the consumer consented to receive only the initial disclosures required under §205.7 by electronic communication.

(ii) Institution's designation of address. A financial institution may designate the electronic address or other location that consumers must use if they send electronic communications under this paragraph.=

3. Appendix A to Part 205 is amended by:

- a. Revising the table of contents at the beginning of the appendix;
- b. Revising Appendices A-3 and A-5; and
- c. Adding new Appendices A-6, A-7, A-8, A-9, and A-10.

The revisions and additions read as follows:

APPENDIX A TO PART 205 -- Model Disclosure Clauses and Forms

A-1--Model Clauses for Unsolicited Issuance (§ 205.5(b)(2))

A-2--Model Clauses for Initial Disclosures (§ 205.7(b))

A-3--Model Forms for Error-Resolution Notice (§§ 205.7(b)(10) and 205.8(b))

A-4--Model Form for Service-Providing Institutions (§ 205.14(b)(1)(ii))

A-5--Model Forms for Government Agencies (§ 205.15(d)(1) and (2))

<A-6--Model Disclosures for Electronic Communication (Disclosures Available in Paper Form or Electronically) (§ 205.4(c)(3))

A-7--Model Disclosures for Electronic Communication (Disclosures Available Only Electronically) (§ 205.4(c)(3))

A-8--Model Notice for Delivery of Information Posted At Certain Locations (§ 205.4(c)(4))

A-9--Sample Form for Electronic Communication (Disclosures Available in Paper Form or Electronically) (§ 205.4(c)(3))

A-10--Sample Form for Electronic Communication (Disclosures Available Only Electronically) (§ 205.4(c)(3))=

* * * * *

A-3--MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) and 205.8(b))

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

In Case of Errors or Questions About Your

Electronic Transfers

Telephone us at [insert telephone number]

or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number (if any).
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

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.

<For errors involving new accounts, point-of-sale, and foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.=

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

* * * * *

A-5--MODEL FORMS FOR GOVERNMENT AGENCIES (§ 205.15(d)(1) AND (2))

(1) Disclosure by government agencies of information about obtaining account balances and account histories § 205.15(d)(1)(I) and (ii).

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)][when you make a balance inquiry at an ATM][when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

(2) Disclosure of error resolution procedures for government agencies that do not provide periodic statements § 205.15(d)(1)(iii) and (d)(2).

In Case of Errors or Questions About Your

Electronic Transfers

Telephone us at [telephone number]

or

Write us at [address]

as soon as you can, if you think an error has occurred in your [EBT][agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- ! Your name and [case] [file] number.
- ! Why you believe there is an error, and the dollar amount involved.
- ! Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

[We will generally complete our investigation within 10 business days and correct any error promptly.]

<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.

For errors involving new accounts, point-of-sale, and foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.=

[In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days.] 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 during the investigation.

[For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.]

If we decide that there was no error, 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.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

<A-6 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 205.4(c)(3))

(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Electronic Fund Transfer Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

C You can choose to receive the following information in paper form or electronically: (description of specific disclosures to be provided electronically).

C How would you like to receive this information

I want paper disclosures.

I want electronic disclosures.

C [We may provide the following disclosures electronically in the future: (description of specific disclosures).]

C [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, [the information will be available upon request] [you will not be able to obtain the information.] When the information is available, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address)]

C To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements?

Yes

No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

Yes

No

C For customer service or assistance with these disclosures, contact us at (address, telephone number).

A-7 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 205.4(c)(3))

(Disclosures Available Only Electronically)

You will receive important information required by the Electronic Fund Transfer Act electronically.

Read this notice carefully and keep a copy for your records.

C The following information will be provided electronically: (description of specific disclosures to be provided electronically).

C This electronic fund transfer service is not available unless you accept electronic disclosures.

C [We may provide the following disclosures electronically in the future: (description of specific disclosures).]

C [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, [the information will be available upon request] [you will not be able to obtain the information.] When the information is available, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address)]

C To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements?

9Yes

9No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

9Yes

9No

Do you want this electronic fund transfer service with electronic disclosures?

9Yes

9No

C For customer service or assistance with these disclosures, contact us at (address, telephone number).

A-8 MODEL NOTICE FOR DELIVERY OF INFORMATION POSTED AT CERTAIN LOCATIONS (§ 205.4(c)(4))

Information about your (identify account) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for ___ days.=

A-9 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 205.4(c)(3))

(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Electronic Fund Transfer Act in paper form or electronically.

Read this notice carefully and keep a copy for your records.

C You can choose to receive the following information in paper form or electronically: Terms and Conditions of our Electronic Banking Service, monthly statements, and change-in-terms notices.

C Please indicate how you would like to receive this information:

I want paper disclosures I want electronic disclosures

C If you choose electronic disclosures, this information will be available at our Internet website: *http://www._____ .com* for 90 days. After that, the information will be available upon request by contacting us at 1-800-xxx-xxxx. When the information is available on our website, we will send you a message at your e-mail address:

insert address

C To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

Yes No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

Yes No

C For customer service or technical assistance with these disclosures, you may contact us by telephone at 1-800-xxx-xxxx or by electronic mail at _____ .help@isp.com.

A-10 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 205.4(c)(3))
(Disclosures Available Only Electronically)

**You will receive important information required by the
Electronic Fund Transfer Act electronically.**

**Read this notice carefully and keep a copy for your
records.**

C The following information will be provided electronically: Terms and Conditions of our Electronic Banking Service, monthly statements, and change-in-terms notices.

C This electronic fund transfer service is available only if you accept these disclosures electronically.

C Information about your account will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at 1-800-xxxx-xxxx. When the information is available on our website, we will send you a message at your e-mail address:

insert address

C To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

Yes No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

Yes No

C Do you want this electronic fund transfer service with electronic disclosures?

Yes No

C For customer service or technical assistance with these disclosures, you may contact us by telephone at 1-800-xxx-xxxx or at _____*.help@isp.com*.

4. In Supplement I to Part 205, under SECTION 205.4 GENERAL DISCLOSURE REQUIREMENTS; JOINTLY OFFERED SERVICES, the following amendments are made:

1. Paragraph 4(a)(2) Foreign Language Disclosures is deleted; and
2. A new paragraph 4(c) Electronic Communication is added.

The additions read as follows:

* * * * *

SUPPLEMENT I TO PART 205--OFFICIAL STAFF INTERPRETATIONS

* * * * *

SECTION 205.4--GENERAL DISCLOSURE REQUIREMENTS; JOINTLY OFFERED SERVICES

* * * * *

<4(c) Electronic Communication

Paragraph 4(c)(1)--Definition

1. Coverage. Information transmitted by facsimile machine may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A financial institution should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form.

Paragraph 4(c)(2)--Electronic Communication between Financial Institution and Consumer

1. Disclosures provided on institution's equipment. Institutions that control equipment providing electronic disclosures to consumers (for example, computer terminals in an institution's lobby or kiosks located in public places) must ensure that the equipment satisfies the regulation's requirements to provide disclosures in a clear and readily understandable format and in a form the consumer may keep. An institution that controls the equipment may provide equipment for the

consumer to print a paper copy in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the institution's website.

2. Retainability. Institutions must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with financial institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve EFTA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the institution also must send them to the consumer's designated electronic mail address or to another location, for example, on the institution's website, where the information may be retrieved at a later date.

3. Timing and delivery. When a consumer signs up for an EFT service on the Internet or by other electronic means, in order to meet the timing and delivery requirements, institutions must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the program allows the consumer to sign up for an EFT service before receiving the disclosures. For example, institution can provide a link to electronic disclosures appearing on a separate page as long as consumers can not bypass the link and they are required to access the disclosures before completing the sign-up process or using the EFT service.

Paragraph 4(c)(2)(ii) In-person exception

1. Initial disclosures in paper form. Consumers who contract for an electronic fund transfer services in person with employees of a financial institution are covered by the exception and must receive initial disclosures in paper form even if the institution uses electronic equipment to process the transaction. Consumers who originally use electronic communication to contact a financial institution from a different location to initiate a request for electronic fund transfer services may,

however, receive initial disclosures by electronic communication at that time, even though the consumer may be required to complete the transaction in person at a later date.

Paragraph 4(c)(3) Disclosure Notice

Paragraph 4(c)(3)(i) Notice by Financial Institution

1. Address for assistance. Financial institutions may provide either an electronic or postal address for consumers to seek technical assistance in lieu of a toll-free telephone number.
2. Toll-free telephone number. If a financial institution provides a telephone number for consumers to call to obtain technical assistance related to electronic communication, the number must be toll-free for nonlocal calls made from an area code other than the one used in the institution's dialing area. Alternatively, a financial institution may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

Paragraph 4(c)(3)(ii) Response by consumer

1. Nature of consent. Consumers must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from consumers' use of an account or acceptance of general account terms.

Paragraph 4(c)(3)(iii) Changes

1. Examples. Examples of changes include a change in technical requirements, such as upgrades to computer software affecting the institution's disclosures provided on the Internet.
2. Timing for notices. A change-in-terms notice must be sent a reasonable period of time before the effective date of the change. The length of a reasonable notice period may vary, depending on the type of change involved. Fifteen days is a reasonable time for providing notice in all cases.
3. Delivery of notices. An institution meets the delivery requirements if the change-in-terms notice is sent to the address provided by the consumer for receiving other disclosures. For

example, if the consumer provides an electronic address to receive notices about periodic statements posted at the institution's website, the same electronic address may be used for the change-in-terms notice. The consumer's postal address must be used, however, if the consumer consented to additional disclosures by electronic communication when receiving the initial notice under § 205.4(c)(3)(i), but provided a postal address to receive periodic statements in paper form.

4(c)(4) Address or location to receive electronic communication.

4(c)(4)(i)

1. Electronic address. A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the financial institution.

4(c)(4)(ii)

1. Identifying account involved. A financial institution is not required to identify an account by reference to the account number. For example, where the consumer does not have multiple accounts, and no confusion would result, the financial institution may refer to "your checking account," or when the consumer has multiple accounts the institution may use a truncated account number.

2. Availability. Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 205.4(c)(4)(ii) is sent to the consumer, whichever occurs later.

By order of the Board of Governors of the Federal Reserve System, August **, 1999.

Jennifer J. Johnson,
Secretary of the Board.
BILLING CODE 6210-01-P

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: Interim rule.

SUMMARY: The Board is publishing an interim rule amending Regulation DD, which implements the Truth in Savings Act. The interim rule allows depository institutions to deliver Regulation DD disclosures on periodic statements in electronic form if the consumer agrees. This interim rule is adopted in response to comments received on a proposed rule issued in March 1998, allowing depository institutions to provide all disclosures under Regulation DD in electronic form. Elsewhere in today's Federal Register, the Board is publishing, for further comment, a modified proposal covering all Regulation DD disclosures.

EFFECTIVE DATE: August **, 1999.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Counsel, or Michael Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, 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), 12 U.S.C. 4301 *et seq.*, requires depository institutions to disclose to consumers yields, fees, and other terms concerning deposit accounts at account opening, upon request, when changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. The Board's Regulation DD (12 CFR Part 230) implements the act. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration.

In the course of 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 electronic communication for delivery of information required by federal laws governing financial services could effectively reduce regulatory compliance burden without adversely affecting consumer protections.

In May 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically (61 FR 19696, May 2, 1996). Based on the comments received on that proposal and further analysis, in March 1998 the Board proposed to amend four of its other regulations to allow institutions to provide disclosures electronically: Regulation DD (63 FR 4533, March 25, 1998), Regulation B (Equal Credit Opportunity; 63 FR 4552), Regulation M (Consumer Leasing; 63 FR 4538), and Regulation Z (Truth in Lending; 63 FR 4548) (collectively, the "March 1998 proposed rules"). In March 1998 the Board also issued an interim rule under Regulation E so that financial institutions could implement systems, such as home-banking programs, to provide account information electronically (63 FR 4528, March 25, 1998).

The March 1998 proposed rules and the interim rule permitted institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was

intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the March 1998 proposed rules and the Regulation E interim rule, the majority of them from financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that the consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and the proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communications before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive electronic disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to

consumers that their account with the institution will not be adversely affected if they do not agree to electronic disclosures, or to permit financial institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers are likely to consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and fear that the goals of federally mandated disclosure laws will be lost.

After careful consideration of the comments and further analysis, the Board is requesting comment on a modified rule under Regulation DD as well as the other four regulations (including Regulation E). The proposed amendments to Regulation DD and the other four regulations are published elsewhere in today's Federal Register.

The Board is also issuing this interim rule under Regulation DD, permitting depository institutions to deliver Regulation DD disclosures on periodic statements in electronic form, as discussed below.

II. Regulatory Revisions

Some depository institutions are prepared to offer on-line banking programs that would include the electronic delivery of periodic statements and other material now provided in paper form. These institutions have urged the Board to move forward with the electronic communication rulemakings, to facilitate the development of electronic commerce and enable them to realize cost savings by reducing or eliminating paper disclosures. Institutions have also requested that, pending the issuance of final rules, the Board adopt interim rules.

Based on the comments received and further analysis, the Board is issuing an interim rule allowing the issuance of periodic statements under Regulation DD. The electronic delivery of periodic statements for consumer asset accounts is already permissible under the Regulation E

interim rule issued in March 1998. Institutions commonly provide a single periodic statement that complies with Regulation E and Regulation DD; thus, the issuance of a comparable interim rule for periodic statements under Regulation DD should allow institutions to implement electronic delivery of deposit account statements with a single set of procedures, and avoid the cost of printing and mailing the information in paper form. The Regulation DD interim rule follows the approach of the Regulation E interim rule.

Electronic delivery of periodic statements for open-end consumer credit accounts is currently permitted under the Board's Official Staff Commentary to Regulation Z, comment 5(b)(2)(ii)-3. Thus, an institution that issues combined periodic statements, covering deposit accounts along with open-end credit accounts (such as for overdrafts), can use electronic delivery for the combined statements and be in compliance with Regulations E, DD, and Z.

The Board believes that, in addition to reducing paperwork and costs for institutions, the interim rule may benefit many consumers by allowing them to receive their periodic account statements, including required disclosures, more quickly and in a more convenient form.

The interim rule under Regulation DD is limited to the electronic delivery of periodic statements. Other disclosures required by Regulation DD, such as account-opening disclosures and change-in-terms notices, are addressed in the modified proposals being published for comment. Additional public comment would be useful before a rule is issued permitting electronic delivery more generally.

The interim rule for Regulation DD incorporates various requirements set forth in the March 1998 proposed rule and in the Regulation E interim rule. For example, the periodic statement must be provided in a form that can be displayed as visual text, and must be clear and conspicuous and in a form that the consumer can retain. With regard to the rule that the consumer must agree to electronic delivery, the reference to state law is not intended to require a

formal contract. The Board believes, however, that consumers should be clearly informed when they are consenting to the electronic delivery of Regulation DD periodic statements.

Comment 230.2(q)-1(ii) in the Regulation DD Official Staff Commentary states that a periodic statement does not include “information provided by computer through home banking services.” Prior to the adoption of this interim rule, if a depository institution provided account information electronically that might be deemed to constitute a periodic statement as defined in Regulation DD, the institution could not comply with the regulation by including the disclosures required by § 230.6 in the electronically provided information; rather, it would have to send paper periodic statements including the required disclosures. The comment was intended to avoid this result. Because electronic delivery of statements, including the required disclosures, will now be permissible, the comment appears to be unnecessary. In the modified proposal under Regulation DD, published elsewhere in today’s Federal Register, the Board proposes to delete the comment.

III. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the interim rule to Regulation DD. Overall, the amendments are not expected to have any significant impact on small entities. A depository institution’s use of electronic communication to provide disclosures required by the regulation is optional. The rule will relieve compliance burden by giving depository institutions flexibility in providing disclosures.

IV. 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 interim rule under the authority delegated to the Board by the Office of Management and Budget. 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 number. The OMB control number for this interim rule is 7100-0271.

The collection of information requirements in this interim rule are found in 12 CFR Part 230. This information is mandatory to ensure adequate disclosure of transaction information affecting consumers using certain home-banking services and consumers receiving periodic statements by electronic communication (12 CFR Part 230.6). The respondents/recordkeepers are for-profit depository 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 imposed by this regulation.

Since the interim amendments provide an alternative method for delivering periodic statements, it is anticipated that the requirements will not be burdensome. The use of electronic communication will likely reduce the paperwork burden of depository institutions. Institutions will be able to use electronic communication to provide periodic statements rather than having to print and mail the information in paper form. There is estimated to be no additional annual cost burden and no capital or start-up cost.

With respect to the existing requirements of Regulation DD as they apply to state member banks, it is estimated that there are 988 respondent/recordkeepers and an average frequency of about 87,100 responses per respondent each year, and the current amount of annual burden is estimated to be roughly 1,464,000 hours.

Because the information is not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act 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. Section 522 (b)(4), (6), and (8)). The disclosures are confidential between institutions and the customer.

The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0271), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects

Advertising, Banks, banking, Consumer Protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Savings.

Text of Revisions

For the reasons set forth in the preamble, the Board amends Regulation DD, 12 CFR part 230, 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. Under section 230.6, a new paragraph (c) is added to read as follows:

§ 230.6 Periodic statement disclosures.

* * * * *

<(c) Electronic communication. (1) Definition. 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.

(2) Electronic communication between depository institution and consumer. A depository institution and a consumer may agree that the institution will send by electronic

communication periodic-statement disclosures required by § 230.6 of this part. Periodic-statement disclosures sent by electronic communication to a consumer must comply with § 230.3 and any applicable timing requirements contained in this part.=

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By order of the Board of Governors of the Federal Reserve System, August **, 1999.

Jennifer J. Johnson,
Secretary of the Board.
BILLING CODE 6210-01-P

