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Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System (the "Board")
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1281

Ladies and Gentlemen:

We appreciate the opportunity to comment on the Board's proposal (the "Proposal") to amend the electronic disclosure provisions in Regulations B, E, M, Z and DD (the "Regulations"). We support the Board's efforts to simplify these provisions and more closely align them with the Electronic Signatures in Global and National Commerce Act (the "E-Sign Act") enacted in 2000.

As part of the Proposal, the Board would withdraw significant portions of interim rules issued in 2001 which never became effective. As the Board has stated, those provisions would have imposed unnecessary obligations on financial institutions over and above the obligations prescribed by E-Sign. (For example, under the interim rules, a financial institution would have to establish redelivery procedures for emails returned as undelivered.) We agree with the Board that these provisions are unnecessary and should be deleted.

In place of the interim rules, the Board is proposing a general rule that electronic disclosures be considered acceptable paper substitutes, in and of themselves. In some cases, these electronic disclosures would be subject to the requirements of the E-Sign Act. This would include the "consent" provision of the E-Sign Act that requires, among other things, that: (i) the consumer must consent to the receipt of disclosures in electronic form; (ii) prior to consenting, the consumer must be provided with the hardware and software requirements for access to and retention of the electronic records; and (iii) the consumer's consent must be electronic, in a manner that "reasonably demonstrates that the consumer can access the information [i.e., the disclosures] in electronic form".

In other cases, the Proposal states that electronic disclosures, rather than paper disclosures, must be provided. These typically involve disclosures that accompany an application or an

advertisement that is in electronic form. In these cases, the electronic disclosures need not conform to the consumer consent or other requirements of the E-Sign Act.

We strongly support the Board's attempt to simplify the provision of electronic disclosures to consumers as set forth in the Proposal. We do, however, suggest two technical modifications to the Proposal, and request that one issue be clarified in the preamble accompanying the final rules, as described below.

1. Customer Retention of Electronic Disclosures

Each of the Regulations requires that, subject to certain exceptions, disclosures must be provided in a form the consumer may keep. (Regulation B uses slightly different language – “in a form the applicant may retain” – but the concept is the same.) The “consent” provision in the E-Sign Act provides financial institutions with guidance as to how to satisfy this requirement for electronic disclosures. If a consumer is provided with specifications for the hardware and software requirements needed to access the electronic disclosure, and in fact consents electronically in a manner that reasonably demonstrates that the consumer can so access the disclosure, a financial institution is accorded some degree of comfort that it is satisfying the requirement that the disclosures are “in a form the consumer may keep”.

Where, however, the Proposal states that electronic disclosures may (or must) be provided without regard to the requirements of the E-Sign Act, it is unclear how a financial institution may prove that the retention requirement has been satisfied. This is true, for example, with respect to disclosures made pursuant to Section 202.14 of Regulation B, Sections 226.5b(e)¹ and 226.19(b) of Regulation Z and Section 230.4(a)(2) of Regulation DD. We suggest that the Board add an affirmative statement to the Official Staff Commentary for each of these sections providing that electronic disclosures shall be considered to be “in a form the consumer may keep” if they are in standard file format (such as HTML or PDF), without a need for further proof by the financial institution.

2. “Mixed-media Applications”

We agree with the general proposition that disclosures accompanying an electronic application should be provided at the time the customer views the application, rather than mailed separately to the customer for review at a later time. There could be situations, however, where applications are taken electronically with hard copies of the disclosures being provided at the same time and place. (For example, a financial institution's representative may assist a customer in completing an electronic application on a hand-held PDA, while providing the customer at the same time with the required paper disclosures.) In these cases, the consumer is certainly not harmed by

¹ This is not a concern for disclosures required by Section 226.5b(d) even though the Proposal would except them from E-Sign and its “consent” requirement, since they are expressly excluded from the Regulation Z retention requirement per Footnote 8 to Section 226.5(a)(1).

receiving paper disclosures, since they are provided at the same time and place as the electronic disclosures.

Because there could be variations in processes where the combination of electronic application and paper disclosure would not be disadvantageous to customers, we believe that the Proposal's hard-and-fast requirement that disclosures accompanying electronic applications must always be in electronic form should allow for an exception that would permit paper disclosures if provided at the same time and place as the electronic application.

3. Co-Owners' Rights of Rescission

The Proposal proposes to modify Sections 226.15(b) and 226.23(b) to require that only one electronic copy of the right to rescind be provided to each joint owner, rather than the usual two copies required for paper transactions. The Proposal would, however, delete from the Official Staff Commentary for each of these sections the following sentence: "Each co-owner must consent to receive electronic disclosures and each must designate an electronic address for receiving the disclosure."

We believe that this language is being removed because the Board believes it is unnecessary, not because the Board wishes to create an exception to the general rule that each co-owner must consent to receipt of electronic disclosures. Nevertheless, for the sake of clarity, we ask that the Board clarify this issue in the preamble accompanying its final rules.

We again thank the Board for its efforts to clarify the rules relating to electronic consumer disclosures and for the opportunity to comment on this proposal. If you have any questions, please do not hesitate to contact the undersigned at (212) 559-2938 or Joyce ElKhateeb of my office at (212) 559-9342.

Very truly yours,



Carl V. Howard

CVH/je