



R-1284

June 29, 2007

**VIA FAX**

Ms. Jennifer J. Johnson, Secretary  
 Board of Governors of the Federal Reserve System  
 20<sup>th</sup> Street and Constitution Avenue, N.W.  
 Washington DC 20551

**Re: Proposed Rule Regarding Truth in Lending Electronic Disclosure Delivery.**

Dear Ms. Johnson:

The Wisconsin Bankers Association (WBA) is the largest financial institution trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loans associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the proposed rule regarding electronic delivery of disclosures required by the Truth in Lending Act (TILA).

TILA requires financial institutions to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in disclosures is intended to promote the informed use of credit and assist in shopping for credit. TILA, as implemented through the Board of Governors of the Federal Reserve System's (FRB's) Regulation Z, requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwellings. TILA and Regulation Z require a number of disclosures to be provided in writing. FRB has proposed changes to current requirements that were implemented by an interim final rule published in 2001, yet never made final. The proposed rule also implements certain provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act.

Under section 226.36 of Regulation Z, institutions are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign). Currently, disclosures may be sent to an e-mail address designated by the consumer, or may be made available at another location, such as an Internet web site. If the disclosures are not sent by e-mail, financial institutions would have to provide a notice to consumers alerting them to the availability of the disclosures. Additionally, disclosures posted on a web site have to be available for at least 90 days to allow consumers adequate time to access and retain the information. Financial institutions are also required to make a good faith attempt to redeliver electronic disclosures that are returned undelivered, using the address information available in their files. The proposed rule eliminates these electronic delivery provisions contained in section 226.36, and instead addresses the electronic delivery of disclosures in several new subsections, revises several subsections, and removes and redesignates several subsections. Sections of Regulation Z

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affected by the proposal are: 226.5a; 226.5b; 226.15; 226.16; 226.17; 226.19; 226.23; 226.24; 226.31; and their applicable commentary sections.<sup>1</sup>

### ***Open-end Credit.***

The proposed rule would amend 226.5(a)(1) to clarify that financial institutions may provide open-end credit disclosures to a consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of E-Sign. Section 226.5(a)(1) would also be revised to provide that open-end credit disclosures required by 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form, without regard to the consumer consent or other provisions of E-Sign if the consumer accesses an application or solicitation for a credit or charge card or home equity line of credit (HELOC) in electronic form.

Section 226.5a(b)(1) sets forth rules for accuracy of the APR disclosure in an application or solicitation for a variable-rate credit card plan. Currently, direct mail APR disclosures are accurate if the rate was in effect within 60 days before mailing the disclosures. FRB has proposed that where this disclosure is provided electronically, the APR will be considered accurate if the rate was in effect within 30 days before the disclosure was sent by electronic mail to a consumer or made available at another location, such as the card issuer's Internet web site.

FRB has also proposes to amend Regulation Z 226.5b(a) to provide that if a consumer accesses a HELOC application in electronic form, the disclosures required on or with an application for a HELOC must be provided to the consumer in electronic form on or with the application. The consumer must be able to access the electronic disclosures at the time the application form or solicitation reply form is made available by electronic communication. If an applicant receives an application in the mail, the financial institution would *not* satisfy its obligation to provide the disclosures at that time by including a reference in the application to the web site where the disclosures are located.

FRB has also proposed changes to open-end credit right of rescission requirements and advertising requirements. Under 226.15(b), financial institutions must provide two copies of a notice of right of rescission to each consumer entitled to rescind. For written (paper) disclosures, this allows consumers to return one copy to the financial institution and retain the second copy. FRB has proposed that a single rescission notice may be sent to each consumer if electronic communication is used in accordance with the consumer consent and other applicable provisions of E-Sign. Further, 226.16(c) would be amended to clarify that if a consumer accesses an advertisement for open-end credit in electronic form, the disclosures required on or with the open-end credit advertisement must be provided to the consumer in electronic form on or with the advertisement. If an application receives an advertisement in the mail, the financial institution would *not* satisfy its obligation to provide the disclosures at that time by including a reference in the application to the web site where the disclosures are located.

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<sup>1</sup> Section 226.5a addresses credit and charge card applications and solicitations. Section 226.5b holds requirements for home equity plans. Section 226.15 addresses right of rescission for open-end credit and section 226.16 addresses advertising rules for open-end credit. Section 226.17 pertains to general disclosure requirements for closed-end credit. Section 226.19 addresses certain residential mortgage and variable-rate close-end credit transactions. Section 226.23 pertains to right of rescission requirements for closed-end credit. Section 226.24 addresses advertising rules for closed-end credit. Section 226.31 contains special rules for certain home mortgage transactions.

***Closed-end Credit.***

The proposed rule would amend 226.17(a)(1) to clarify that financial institutions may provide the closed-end credit disclosures to consumers in electronic form, subject to compliance with consumer consent and other applicable provisions of E-Sign. Some institutions may provide disclosures to consumers both in paper and electronic form and rely on the paper form of disclosures to satisfy their compliance obligations. For those institutions, the duplicate electronic form of the disclosures may be provided to consumers without regard to the consumer consent or other provisions of E-Sign because the electronic form of the disclosure is not used to satisfy the regulation's disclosure requirements.

Section 226.17(a)(1) would also be revised to provide that the closed-end credit disclosures required by 226.19(b) and 226.24 may be provided to the consumer in electronic form, and that the disclosures required by 226.17(g) may be made available to the consumer in electronic form without regard to the consumer consent or other provisions of E-Sign, under the circumstances set forth in those sections. FRB also proposes to amend 226.19(b) to provide that if a consumer accesses an adjustable rate mortgage (ARM) application in electronic form, the disclosures required on or with an application for an ARM must be provided to the consumer in electronic form on or with the application. Section 226.19(b) requires financial institutions to provide certain disclosures relating to ARM loans secured by the consumer's principal dwelling when an application form is provided to the consumer or before the consumer pays a nonrefundable fee, whichever is sooner. The proposal would require that the consumer must be able to access the electronic disclosures at the time the application form or solicitation reply form is made available by electronic communication. On the other hand, if an applicant receives an application in the mail, the financial institution would *not* satisfy its obligation to provide the disclosures at that time by including a reference in the application to the web site where the disclosures are located.

FRB has also proposed changes to closed-end credit right of rescission requirements and advertising requirements that mirror the proposed changes to open-end credit. FRB has proposed that a single rescission notice may be sent to each consumer if electronic communication is used in accordance with the consumer consent and other applicable provisions of E-Sign. Section 226.24(d) would be amended to clarify that if a consumer accesses an advertisement for closed-end credit in electronic form, the disclosures required on or with the closed-end credit advertisement must be provided to the consumer in electronic form on or with the advertisement. On the other hand, if a consumer receives a written closed-end credit advertisement in the mail, the financial institution would *not* satisfy its obligations to provide advertising disclosures at that time by including a reference in the advertisement to a web site where the disclosures are located.

***Certain Home Mortgage Transactions.***

Subpart E of Regulation Z implements the Home Ownership and Equity Protection Act (HOEPA) and sets forth special rules, including disclosure requirements for certain mortgage loans with rates or fees above specified thresholds and for reverse mortgage loans. FRB has proposed to revise 226.31(b) to clarify that the HOEPA and reverse mortgage disclosures may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of E-Sign. Some institutions may provide disclosures to consumers both in paper and electronic form and rely on the paper form of disclosures to satisfy their compliance obligations. For those institutions, the duplicate electronic form of the disclosures may be provided to consumers without regard to the consumer consent or other provisions of E-Sign because the electronic form of the disclosure is not used to satisfy the regulation's disclosure requirements.

**Comments**

WBA commends FRB in its efforts to further reduce regulatory burdens on financial institutions and supports FRB's actions to modify Regulation Z disclosure requirements to better meet the needs of today's applicants. WBA agrees with FRB that both the industry and consumers have gained considerable experience with electronic disclosures and that consumers would benefit by having timely access to application-related disclosures in electronic form. WBA supports FRB's proposal to permit electronic delivery of certain Regulation Z disclosures without first obtaining the consumer's consent when the consumer has received an application or solicitation for credit in an electronic form. WBA is disappointed financial institutions will have a separate 60-day time period for paper open-end variable rate APR disclosures versus FRB's proposed 30-day time period for electronic open-end variable rate APR disclosures. WBA recommends both time periods should be set at a 60-day period to remain consistent in both bank practices and consumer awareness. WBA supports FRB's efforts to remain consistent in its treatment of other electronic disclosure delivery requirements. WBA also supports FRB's removal of e-mail alert notices and the removal of a minimum 90-day retention of disclosures on a web site and believes financial institutions will continue to make available required disclosures for consumers to review.

In conclusion, WBA supports FRB's proposal to withdraw portions of the 2001 interim final rule on electronic disclosures that restate or cross-reference provisions of E-Sign and retain the substance of certain provisions of the interim final rule that provide regulatory relief or guidance regarding electronic disclosures. Once again, WBA appreciates the opportunity to comment on the proposed rule.

Sincerely,

Kurt R. Bauer  
President/CEO