

June 29, 2007

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

Re: Docket No R-1281 through R-1285
Proposed Amendments to Regulations B, E, M, Z, and DD

Dear Ms. Johnson:

This letter is submitted by the Consumer Bankers Association (“CBA”) in response to the proposal by the Board of Governors of the Federal Reserve System (the “Board”) to amend several regulations relating to the delivery of electronic disclosures pursuant to Regulations B, E, M, Z and DD (the “Proposed Rules”). The Proposed Rules are intended to revise and simplify the Interim Rules for electronic delivery of disclosures, which were issued by the Board on March 30, 2001, but never became mandatory (“Interim Rules”), consistent with the Electronic Signatures in Global and National Commerce Act (“E-Sign”).

CBA is the recognized voice on retail banking issues in the nation’s capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, and deposits. CBA was founded in 1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation and regulation. CBA members include most of the nation’s largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry’s total assets. CBA appreciates the opportunity to comment on the Proposed Rules.

CBA strongly endorses the Board’s efforts to facilitate electronic disclosure delivery. We support the withdrawal of significant portions of the Interim Rules that, as the Board has stated, would have imposed unnecessary obligations beyond those contained in E-Sign. We also support the Board’s proposal to exempt certain disclosures from the special consumer consent requirements of E-Sign, as authorized by that legislation. CBA also would like to suggest certain adjustments to the Proposed Rules in order to further

facilitate consumer ease of access and understanding of required disclosures, as well as compliance on the part of financial institutions.

Facilitating In-Person Applications

The Board proposes pursuant to Regulations B and Z to require delivery of certain disclosures electronically at the time the credit application is taken, apparently whether the electronic application is submitted remotely or in person. This provision will not easily accommodate transactions where, for example, application information may be entered by an employee or agent of the lender and confirmed by the consumer; or it may be entered directly by the consumer at a terminal at the lender's offices. We urge the Board to accommodate consumers who do not wish to receive the disclosures electronically, while avoiding the E-Sign consumer consent disclosure requirements. This accommodation could be effectuated by allowing lenders the option of providing disclosures in paper form, to the extent otherwise permissible under applicable timing and delivery requirements. In the alternative, in-person transactions could be excluded from the mandatory electronic disclosure requirement.

Disclosure Retention Requirements

The Proposed Rules state, in certain provisions, 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, where it is mandated that disclosures must be given in retainable form. We recommend that the Board add an affirmative statement to the Official Staff Commentary for Section 202.14 of Regulation B, Sections 226.5b (e) and 226.19 (b) of Regulation Z and Section 230.4 (a)(2) of Regulation DD to the effect that providing electronic disclosures made under these sections are, without further proof from the financial institution, considered to be "in a form the consumer may keep."

Use of Mobile Devices and ATMs

Smaller communication devices or enhanced ATMs that may, in the future, be used by existing customers to initiate, for example, an abbreviated application, create barriers to the display, storage or printing of disclosures. These devices do not fall neatly into telephone transactions or those that are initiated "electronically," as those terms are used in the Proposed Rules. They are capable of delivering information only in small increments, with little capacity for storage for disclosures. The same products, if sought through a traditional telephone-banking channel, often trigger special disclosure delivery and timing rules that recognize their limitations (see, e.g., Section 226.5a of Regulation Z). Accordingly, we urge the Board to clarify that any special timing or delivery rules that apply to disclosures resulting from telephone applications or transactions should also

apply to any transaction initiated over a mobile device or ATM, whether by voice, text, voice recognition, touch screen, or other electronic interaction.

Non-Bypassable Link

Under the Proposed Rules, creditors would be required to meet the formatting requirements contained in Section 226.a(a)(2) of Regulation Z. Disclosures provided on or with an application would have to be provided in a prominent location. Specifically, required application and solicitation disclosures would have to appear on the screen when the application or reply form appears; be located on the same web “page” as the application or reply form if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates the disclosures contain rate, fee and other information; or be provided through a link to the electronic disclosure on or with the application or reply form as long as the consumer cannot bypass the disclosures before submitting the application or reply form.

Requiring creditors to include a non-by-passable link to applicable disclosures goes beyond the requirements of 226.5a of Regulation Z. The proper implementation of a “non-bypassable” standard will create uncertainty and presents serious technological and compliance problems. CBA recommends its deletion.

Regulation DD Account Opening Disclosures

In the proposed revision to §230.4(a)(2)(i) of Regulation DD, the Board provides that the requirement to provide account-opening disclosures upon request when the consumer is not present at the institution may be satisfied electronically if the consumer “agrees”. The same “agrees” language is contained in the revision to the Board’s Official Staff Commentary under Regulation DD in comment 230.4(a)(2)(i)-4. Use of the word “agrees” suggests that there needs to be an agreement of some kind between the bank and the consumer about providing “on request” disclosures electronically, which then raises the question as to what form that “agreement” can be in—oral, paper or electronic. The Commentary provision indicates that a financial institution providing the “on request” disclosures electronically, if the consumer “agrees”, does not need to comply with the consumer consent or other provisions of E-Sign. However, it is not clear that the

“agreement” to provide the “on request” disclosures electronically can, itself, be exempt from the consumer consent and other provisions of E-Sign.

CBA believes that the Board needs to avoid “agrees” or “agreement” language, and instead word this provision in terms of whether the consumer will accept the disclosures electronically. Additionally, in the Commentary provision, the last sentence regarding the lack of a requirement for an institution to provide, or a consumer to agree to receive, disclosures in electronic form is unnecessary. If quoted out of the very particular context of the “on request” disclosures it would be inconsistent with other provisions of the regulation that do require disclosures to be provided electronically or that do not give the consumer the right to refuse electronic disclosures. Accordingly, we recommend that this sentence be deleted. Our membership has suggested revisions to the regulatory and Commentary provisions to address these matters and we urge their adoption:

In §230.4(a)(2)(i): “. . . or electronically if the ~~consumer agrees~~ institution determines that the consumer will accept the disclosures electronically.”

In comment 230.4(a)(2)(i)-4 (the following assumes the last sentence is not deleted, but the better approach is to delete the last sentence entirely, and thus that sentence is shown in brackets): “. . . the institution may send the disclosures in paper form or, if the ~~consumer agrees~~ institution determines that the consumer will accept the disclosures electronically, may provide the disclosures electronically, such as to an e-mail address that the consumer provides for that purpose, or on the institution’s Web site, without regard to the consumer consent or other provisions of the E-Sign Act. [The regulation does not require an institution to provide, nor a consumer to ~~agree to receive~~ accept, disclosures in electronic form.]

CBA appreciates the opportunity to comment on the Proposed Rules and would be pleased to provide further information, as required by the Board and Staff. Questions may be directed to Marcia Sullivan at (703) 276-3873; Steve Zeisel at (703) 276-3871; Darlene Papier at (703) 276-3886; or Joe Crouse at (703) 276-3869.

Sincerely,

Joseph R. Crouse
Counsel, Legislative & Regulatory Affairs