



Steven Alan Bennett
Executive Vice President
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Via E-Mail

June 28, 2007

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Docket Numbers R-1281, R-1282, R-1283, R-1284, and R-1285, Proposed Rules on the Electronic Delivery of Disclosures

Dear Ms. Johnson:

USAA commends the Board of Governors of the Federal Reserve System regarding its proposed revisions to the interim rules governing the electronic delivery of disclosures under Regulations B, E, M, Z, and DD. USAA appreciates the opportunity to submit comments to the proposed rules, and fully supports the Board's efforts to simplify and clarify the rules for electronic delivery. While appreciative of the proposed rules, USAA requests that the Board consider the following recommendations, as explained more fully below:

1. Delete the "cannot bypass the disclosure example" in the Official Staff Commentary to Regulation Z or include other examples of alternative methods for presenting electronic disclosures.
2. Allow consumers to consent to electronic delivery over the telephone.
3. Confirm that prior demonstrable consent to electronic delivery is not required where the consumer requests an electronic document and there is evidence of actual delivery.
4. Allow adverse action and incomplete application notices under Regulation B to be provided electronically without prior consent.
5. Extend the flexibility proposed for online applications, advertising and solicitation material to the delivery of electronic disclosures for other types of online banking transactions.

About USAA

USAA is a member-owned company that provides financial services to military members and their families. This includes property and casualty insurance, life and health insurance, annuities, no-load mutual funds, discount brokerage, college savings plans, discretionary asset management programs, trust services, deposit accounts, loans and mortgages, relocation services, credit cards, and vehicle purchase assistance.

The association is well known for its exceptional customer service and the trust it has earned from its membership of more than 6.1 million members. This trust is illustrated through recognition from:

- **BusinessWeek:** Rated No. 1 by BusinessWeek for outstanding member service, earning recognition as BusinessWeek's "Customer Service Champs" (2007).
- **Forrester Research:** Highest-scoring financial services firm in customer advocacy rankings (2004-2006).
- **J.D. Power and Associates:** Highest customer satisfaction score on National Auto Insurance Study (2006).
- **J.D. Power and Associates:** No. 1 in customer satisfaction among the largest national home mortgage lenders (2004).

USAA serves its members through two banking companies. USAA Federal Savings Bank provides loans and deposit products, and USAA Savings Bank provides credit cards. Together, the banks serve over 3.6 million customers.

Comments

USAA supports the letters submitted by several industry groups, including the Electronic Signatures and Records Association (ESRA), the American Bankers Association, and MasterCard. In particular, we agree that the Board should allow lenders to take advantage of the timing and delivery rules applicable to telephone applications where the customer conducts their banking business via a mobile device, ATM or via a face-to-face interaction with a bank representative utilizing a computer terminal. We also agree that the "cannot bypass the disclosure" example in the Official Staff Commentary to Regulation Z should be deleted.

We applaud the Board's efforts to strike the appropriate balance between protecting consumers and avoiding burdensome steps in the online experience that interfere with online users' ability to explore and complete banking transactions. USAA maintains only one banking branch and serves its customers around the world through internet, mail and telephone banking. Having unencumbered access to usaa.com at all times is especially critical for those of our customers who are members of the military and are currently deployed. Further, the customers of USAA have grown accustomed to interacting with USAA through telephonic and electronic means. Our active military members in particular have limited access to a computer and very limited time to conduct their banking transactions. Electronic banking better suits their highly mobile lifestyles. To accommodate the unique circumstances of our military membership, providing a simple, streamlined and predictable online experience is critical. We urge the Board to extend the proposed rules further by allowing for additional flexibility by banks in interacting with their customers online, and by providing greater consistency with regulatory guidance applicable to non-banks.

We would like to emphasize a few additional points.

1. Delete the “cannot bypass the disclosure example” or include other examples of alternative methods for presenting electronic disclosures.

Unlike the proposed commentary to Regulations B, E, M and DD, the proposed commentary to Regulation Z continues to include alternative methods for presenting electronic application disclosures. One example provided in the Regulation Z commentary is that “... creditors could instead provide a link to the electronic disclosures as long as consumers cannot bypass the disclosures before submitting the applications.” (Official Staff Commentary under Reg. Z, §§ 226.5a, 226.5b, and 226.19). USAA believes that the “cannot bypass the disclosure” example should be deleted as it is inconsistent with the commentary for Regulations B, E, M and DD, and because it limits the flexibility for banks to provide Regulation Z disclosures in a variety of manners that ensure delivery to the consumer. Although the Section-by-Section Analysis in the Supplementary Information section of the proposed Regulation Z rules makes clear that they are examples rather than an exhaustive list, retaining this example suggests that there is only one acceptable form of linked disclosure. If the Board chooses to retain that example, we recommend that the Board include additional examples in the Commentary clarifying that creditors could use other methods of delivering disclosures. For example, creditors could use a link as long as it is clear and conspicuous to consumers and the consumers are required to take at least one additional affirmative acknowledgement step, such as clicking a checkbox or radio button before proceeding or prior to completing the transaction. The Board already makes clear that as with paper, the lender need not confirm that the consumer has read the disclosures, and the acknowledgement step would help ensure that the consumer does not overlook the required disclosures. Adding a more definitive example would help mitigate the ambiguity of the “cannot bypass” definition.

2. Allow consumers to consent to electronic delivery over the telephone.

For simplicity and consistency with the requirements applicable to the securities industry, we encourage the Board to use its authority under Section 104(d)(1) of the Electronic Signatures in Global and National Commerce Act to enable institutions to electronically deliver Regulations B, E, M, Z and DD disclosures to any consumer who specifically authorizes such delivery over the telephone. The Securities and Exchange Commission issued guidance in 2000 clarifying that informed consent to receive information electronically may be obtained over the telephone so long as a record of the consent is retained and so long as the consent is obtained in a manner that assures its authenticity. (Securities Act Release No. 7856, Apr. 28, 2000). Although issued prior to the enactment of the E-Sign Act, the SEC has seen no reason since that time to change this guidance. USAA encourages the Board to allow for similar flexibility for banks. If a document underlying a transaction being initiated over the telephone contains information that is required to be in writing, banks are not able to complete that requested

transaction without the customer returning after the telephone call to consent to receive the disclosures online. For USAA, this issue often arises when a deployed or imminently deploying member calls USAA to apply for a product and, in the interest of time and convenience, requests that USAA post the document to retrieve online. In order then to retrieve that document online, the member must consent to something they specifically requested and thought had been authorized over the telephone. This process is often confusing and disruptive to members. It also poses a financial burden to the institution to build an online consent process to deliver a single document that the consumer specifically requested be sent electronically.

To help mitigate consumer risk, the Board could specify that oral consent to electronic delivery is permissible only when the requesting consumer is authenticated and provides an email address over the telephone. The fact that a consumer has an email address demonstrates the ability to access the internet, and the fact that the format is readily accessible helps mitigate any risk that the consumer would not be able to access the document.

3. Confirm that prior demonstrable consent to electronic delivery is not required where there is evidence of actual delivery.

The SEC has also provided guidance that consent to electronic delivery is not required where there is evidence of actual delivery. Analogous examples of such evidence in the securities industry include the investor actually accessing the document on the applicable web site, faxing a document to an investor who has provided a fax number, or the investor emailing the applicable document with at least a portion of it completed. (Securities Act Release No. 7233, Oct. 6, 1995). In the interest of simplicity and consistency in financial services, we encourage the Board to modify the rules to clarify that the E-Sign provisions do not apply to the electronic delivery of Reg. B, E, M, Z and DD disclosures where (a) the authenticated consumer requested, by telephone or any other means that the document be provided electronically, and (b) the financial institution can demonstrate actual receipt by the requestor. For example, if a loan package is posted for the consumer and such package consists of a single document which includes disclosures as well as a request for certain follow-up information from the consumer, the fact that the consumer supplied the requested information would demonstrate that the consumer received the package, including the required disclosures.

4. Allow adverse action and incomplete application notices under Regulation B to be provided electronically.

Section 615(a) of the Fair Credit Reporting Act provides that a notice of adverse action may be provided orally, electronically or in writing. Accordingly, a user of a credit report is not required to comply with the E-Sign consent provisions before providing an FCRA adverse action notice electronically. However, under the proposed rule, Section 202.9 of Regulation B would still require that an adverse

action notice or notice of incomplete application be provided in paper form unless the lender first complied with the consent provisions of the E-Sign Act. Because of this inconsistency, someone who applies online for a non-credit product that involves the review of a consumer report could receive an almost instantaneous electronic adverse action notice rather than waiting several days for a letter to arrive with the news that he or she was declined. On the other hand, an applicant who applies online for a credit product would need to first consent to receive a Regulation B communication electronically. In the case of an incomplete application, electronic delivery would enable the consumer to resolve outstanding application issues more quickly than if he/she had received such request for additional information by mail. The immediacy of the electronic notice is not only beneficial to the consumer but benefits the industry because it helps avoid the additional burden and costs associated with handling telephone calls from applicants who inquire about the status of their electronic applications while awaiting a letter. We believe that online applicants expect to receive electronic communications regarding the transactions they complete online and that interrupting them with a potentially confusing electronic consent disclosure serves no useful purpose. To allow for additional flexibility and for consistency with the FCRA adverse action provisions, we encourage the Board to modify the proposed rules to allow creditors to send Regulation B notices electronically without regard to the prior consent provisions of the E-Sign Act if the consumer applies online or if the consumer applies by telephone and orally consents to receiving the decision electronically.

5. Extend the flexibility proposed for online applications, advertising and solicitation material to the delivery of electronic disclosures for other types of online banking transactions.

The proposed rules would allow banks to electronically deliver certain types of disclosures, such as application, advertising and solicitation disclosures, if consumers access such materials online. Under the proposal, banks could do so “without regard to the consumer consent or other provisions of the E-Sign Act.” We applaud and appreciate this flexibility. We believe that it is essential and consistent with the expectations and wishes of our members who conduct their banking business primarily or exclusively online. We encourage the Board to use its authority under Section 105(a) of the Truth in Lending Act and Section 104(d)(1) of the E-Sign Act to allow institutions to deliver Regulation B, E, M, Z and DD disclosures electronically for other transactions the member chooses to conduct online, without regard to the prior consumer consent provisions of the E-Sign Act.

For example, if a customer applies for a deposit account online, a bank should be able to deliver the account opening disclosures required by Section 230.4 of Regulation DD and the initial disclosures required by Section 205.7 of Regulation E during that online account opening session without asking the consumer for his/her consent prior to doing so. Similarly, online loan closings will likely

become more common in the future, and banks should be able to deliver the initial disclosures required by Section 226.6 of Regulation Z as well as the loan transaction disclosures required by Section 226.18 of Regulation Z without regard to the prior consent provisions of the E-Sign Act to the extent a consumer elects to proceed with those closing transactions online.

Internet practices have expanded and improved exponentially over the past few years, and they will continue to evolve at a very rapid pace. It is a challenge for regulations to keep pace with the advances in technology and internet practices in the industry. We encourage the Board to allow for maximum flexibility to account for the ever expanding variety of transactions that are becoming feasible online and that consumers choose to conduct online. As is the case with an online application, it is our view that when consumers choose to conduct bank transactions online, rather than by mail or telephone, they presume that they will receive the related regulatory-required content online.

We agree with the Section-by-Section Analysis in the Supplementary Information section of the proposed Regulation Z, which includes the statement that “. . . because these consumers are viewing the application, solicitation, or advertisement online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.” We feel that the same holds true for other online banking transactions that consumers choose to complete online. We are also concerned that it is illogical and somewhat awkward to interrupt the online transaction flow to ask for consent prior to presenting disclosures that directly relate to the transaction the consumer is attempting to complete. The consumer would likely not understand what he/she is agreeing to receive electronically because they have not seen the disclosures at the point they are asked to consent to receiving them. Having a single, consistent approach toward online banking transactions could also prevent consumer confusion that may result if prior consent to electronic delivery were required for some types of one-time transactions (e.g., online applications) but not others (e.g., an online loan closing transaction).

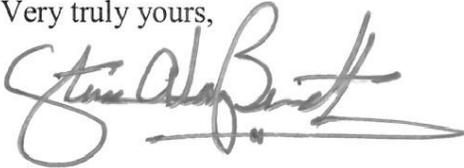
If the Board determines that it should not broaden the categories of electronic disclosures that may be delivered during online transactions without prior consent, then we suggest that the Board give financial institutions another option. Where electronic disclosures are provided as part of an online transaction, the rules could require the institution (a) to provide the disclosures in an electronic format capable of being retained, and (b) at the end of the transaction, to clearly and conspicuously instruct the consumer how to request the disclosures in an alternative format (such as paper mail) and whether a fee would apply. The fact that the regulations require financial institutions to retain regulatory-required documents for specified time periods ensures that financial institutions would be able to accommodate such requests for a reasonable time period after completion of the online transaction.

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Please note that our concern is with the prior consent provision of the E-Sign Act as applied to online banking transactions. We understand that where the member is electronically signing a loan document online, such as a loan agreement, the E-Sign Act provisions applicable to electronic signatures would continue to apply to that document. Also, prior consent would still be needed in order to send subsequent disclosures electronically, such as periodic statements or change in terms notices, because the consumer's intent to receive ongoing information electronically cannot be inferred from his/her conduct online as it can with a particular one-time online transaction such as an account opening.

We appreciate the opportunity to comment and thank the Board for considering our recommendations.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Alabert", with a long horizontal flourish extending to the right.