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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1043]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; request for comments.

SUMMARY: The Board is adopting an interim final rule amending Regulation Z, which implements the Truth in Lending Act, to establish uniform standards for the electronic delivery of disclosures required by the act and regulation. The rule provides guidance on the timing and delivery of electronic disclosures to ensure consumers have adequate opportunity to access and retain cost information when shopping for credit or before becoming obligated for an extension of credit. (Similar rules are being adopted under other consumer financial services and fair lending regulations administered by the Board.) Under the rule, creditors may deliver disclosures electronically if they obtain consumers' affirmative consent in accordance with the Electronic Signatures in Global and National Commerce Act. In addition, the regulation is revised to allow creditors to provide disclosures in foreign languages. The rule is being adopted as an interim rule to allow for additional public comment.

DATES: The interim rule is effective March 30, 2001; however, to allow time for any necessary operational changes, the mandatory compliance date is October 1, 2001. Comments must be received by June 1, 2001.

ADDRESSES: Comments, which should refer to Docket No. R-1043, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also 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's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP-500 in the Board's Martin Building between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel; Kathleen Ryan, Senior Attorney; or Deborah J. Stipick, Attorney; Division of Consumer and Community Affairs, at (202) 452-2412 or (202)

452-3667.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 et seq., is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to promote the informed use of credit and assist in shopping for credit. TILA 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, presuming that creditors provide paper documents. Under the Electronic Signatures in Global and National Commerce Act (the E-Sign Act)(15 U.S.C. 7001 et seq.), however, electronic documents and signatures have the same validity as paper documents and handwritten signatures.

Board Proposals Regarding Electronic Disclosures

Over the past few years, the Board has published several interim rules and proposals regarding the electronic delivery of disclosures. In 1996, after a comprehensive review of Regulation E (Electronic Fund Transfers), the Board proposed to amend the regulation to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696, May 2, 1996). Based on comments received on the 1996 proposal, on March 25, 1998, the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14528) and similar proposals under Regulation Z (63 FR 14548) and other financial services and fair lending regulations administered by the Board. The 1998 interim rule and proposed rules were similar to the 1996 proposed rule under Regulation E.

The 1998 proposals and interim rule allowed depository institutions, creditors, lessors, and others to provide disclosures electronically if the consumer agreed, with few other requirements. For ease of reference, this background section uses the terms ``institutions'' and ``consumers.''

Industry commenters generally supported the Board's 1998 proposals and interim rule, but many of them sought specific revisions and additional guidance on how to comply with the

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disclosure requirements in certain transactions and circumstances. In particular, they expressed concern that the rule did not specify a uniform method for establishing that an ``agreement'' was reached for sending disclosures electronically. Consumer advocates, on the other hand, generally opposed the 1998 proposals and the interim rule. They believed that consumer protections in the proposals were inadequate, especially in connection with transactions that are typically consummated in person (such as automobile loans and leases, home-secured loans, and door-to-door credit sales).

September 1999 Proposals

In response to comments received on the 1998 proposals, the Board published revised regulatory proposals in September 1999 under Regulations B, E, M, Z, and DD (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999) (collectively, the ``1999 proposals''), and an interim rule under Regulation DD (64 FR 49846). The interim rule under Regulation DD allowed depository institutions to deliver disclosures on periodic statements electronically if the consumer agrees.

Generally, the 1999 proposals required institutions to use a standardized form containing specific information about the electronic delivery of disclosures so that consumers could make informed decisions about whether to receive disclosures electronically. If the consumer affirmatively consented, most disclosures could be provided electronically. To address concerns about potential abuses, the 1999 proposals generally would have required disclosures to be given in paper form when consumers transacted business in person. The proposals contained rules for disclosures that are made available to consumers at an institution's Internet web site (governing, for example, how long disclosures must remain posted at a web site).

Comments on the September 1999 Proposals

The Board received letters representing 115 commenters expressing views on the revised proposals. Industry commenters generally supported the Board's approach of establishing federal rules for a uniform method of obtaining consumers' consent to the receipt of electronic disclosures instead of deferring to state law. Still, many sought specific additional guidance and in some cases wanted more flexibility. They were concerned about the length of time the proposals would have required electronic disclosures to remain available to a consumer at an institution's Internet web site or upon request. In addition, they believed the proposed rule requiring paper disclosures for mortgage loans closed in person was not sufficiently flexible. In addition, they believed the proposed rule requiring paper disclosures for mortgage loans closed in person was not sufficiently flexible. Consumer advocates believed the 1999 proposals addressed many of their concerns about the 1998 proposals. Nevertheless, they urged the Board to incorporate greater protections for consumers, such as restricting the delivery of electronic disclosures to only those consumers who initiate transactions electronically.

The Board also obtained views through four focus groups with individual consumers, conducted in the Washington-Baltimore metropolitan area. Participants reviewed and commented on the format and content of the proposed sample consent forms, as well as on alternative revised forms.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed the E-Sign Act, which was enacted to encourage the continued expansion of electronic commerce. The E-Sign Act generally provides that electronic documents and signatures have the same validity as paper documents and handwritten signatures. The act contains special rules for the use of electronic disclosures in consumer transactions. Consumer disclosures may be provided in electronic form only if the consumer affirmatively consents after receiving certain information specified in the statute.

The Board and other government agencies are permitted to interpret the E-Sign Act's consumer consent requirements within prescribed limits, but may not impose additional requirements for consumer consent. In addition, agencies generally may not re-impose a requirement for using paper disclosures in particular transactions, such as those conducted in person.

The consumer consent provisions in the E-Sign Act became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to use electronic disclosures under Regulations B, E, M, Z and DD if the consumer affirmatively consents in the manner required by section 101(c) of the E-Sign Act. Under section 101(c)(5) of the E-Sign Act, consumers who consented prior to the effective date of the act to receive electronic disclosures as permitted by any law or regulation, are not subject to the consent requirements.

II. The Interim Rule

The Board is adopting an interim final rule to establish uniform standards for the electronic delivery of disclosures required under Regulation Z. Consistent with the requirements of the E-Sign Act, creditors generally must obtain consumer's affirmative consent to provide disclosures electronically.

The interim rules also establish uniform requirements for the timing and delivery of electronic disclosures. Disclosures may be sent by e-mail to an electronic address designated by the consumer, or they may be made available at another location, such as an Internet web site. If the disclosures are not sent by e-mail, consumers must receive a notice alerting them to the availability of the disclosures. Disclosures posted on a web site must be available for at least 90 days, to allow consumers adequate time to access and retain the information. With regard to the timing of electronic disclosures, for disclosures that must be provided before the consumer becomes obligated for an extension of credit, consumers are required to access the disclosures before becoming obligated. Under the interim rule, institutions must make a good faith attempt to redeliver electronic disclosures that are returned undelivered, using the address information available in their files. Similar rules are being adopted under Regulations B, E, M, and DD.

III. Request for Comment

Interim Rules

The interim rules include most of the revisions that were part of the 1999 proposals and were not affected by the E-Sign Act. The Board is adopting these rules with some minor changes discussed below. The rules are adopted as interim rules, to allow commenters to present new information or views not previously considered in the context of the 1998 and 1999 proposals. Since the Board's 1999 proposals were issued, more institutions have gained experience in offering financial services electronically. The Board believes that additional comments, beyond those previously considered in connection with the Board's earlier proposals, might inform the Board whether any developments in technology or industry practices have occurred that warrant further changes in the rules. The

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comment period ends on June 1, 2001. The Board expects to adopt final rules on a permanent basis prior to October 1, 2001.

Interpreting E-Sign Provisions

Under section 104(b) of the E-Sign Act, the Board and other government agencies are permitted to interpret the act, within

prescribed limits. The Board may issue rules that interpret how the E-Sign Act's consumer consent requirements apply for purposes of the laws administered by the Board. Also, the Board may, by regulation, exempt a particular category of disclosures from the E-Sign Act's consumer consent requirements if it will eliminate a substantial burden on electronic commerce without creating material risk for consumers.

The Board requests comment on whether the Board should exercise its authority under the E-Sign Act in future rulemakings to interpret the consumer consent provisions or other provisions of the act, as they affect the Board's consumer protection regulations. Comment is requested on whether the statutory provisions relating to consumer consent are sufficient, or whether additional guidance is needed. For example, is interpretative guidance needed concerning the statutory requirement that consumers confirm their consent electronically in a manner that reasonably demonstrates they can access information in the form to be used by the creditor? Is clarification needed on the effect of consumers' withdrawing their consent, or on requesting paper copies of electronic disclosures? Institutions must also inform consumers of changes in hardware or software requirements if the change creates a material risk that the consumer will not be able to access or retain the disclosure. The Board solicits comment on whether regulatory standards are needed for determining a ``material risk'' for purposes of Regulation Z and other financial services and fair lending laws administered by the Board, and if so what standards should apply.

Under section 104(d) of the E-Sign Act, the Board is authorized to exempt specific disclosures from the consumer consent requirements of section 101(c) of the E-Sign Act, if the exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. The Board requests comment on whether it should consider exercising this exemption authority.

Study on Adapting Requirements to Online Banking and Lending

The E-Sign Act eliminated legal impediments to the use of electronic records and signatures. The Board requests comment on whether other legislative or regulatory changes are needed to adapt current requirements to online banking and lending and facilitate electronic delivery of consumer financial services.

As an example, under Regulations Z and DD, periodic statements inform consumers about their account activity over a period of time, typically monthly. The beginning and ending dates of the cycle determine costs and other information that must be disclosed. In addition, transmittal of the periodic statement triggers important consumer protections such as billing error resolution procedures. Online banking, however, can provide consumers with up-to-date information about their accounts on a continuing basis. Such information is a helpful supplement to--but does not comply as a substitute for--periodic statements. Should the rules for periodic statements be modified for online banking, and if so, how could the rules be crafted to maintain for consumers (1) a perspective of the cost and activity of an account over time, and (2) protections for resolving errors or liability for unauthorized transactions.

The comments may assist the Board in future efforts to update the regulations. The comments may also be used in connection with a study required under the Gramm-Leach-Bliley Act of 1999. That act requires the federal bank supervisory agencies to conduct a study of banking regulations that affect the electronic delivery of financial services and to submit to the Congress a report recommending any legislative changes that are needed to facilitate online banking and lending.

IV. Section-by-Section Analysis

Pursuant to its authority under section 105 of TILA, the Board amends Regulation Z to establish uniform standards for the use of electronic communication to provide disclosures required by this regulation. Electronic disclosures can effectively reduce compliance costs without adversely affecting consumer protections. The purpose of Regulation Z disclosures is to ensure that consumers have meaningful information about credit terms and to promote comparison shopping. The use of electronic communication may allow creditors to provide Regulation Z disclosures to the consumer earlier in the lending process. To the extent that a creditor may make electronic disclosures available at its Internet web site instead of providing the disclosures directly to the consumer, the Board finds that such an exception is warranted, acting pursuant to its authority under section 105(a) of TILA. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to changes in the official staff commentary.

Subpart B--Open-end Credit

Section 226.5 General Disclosure Requirements

5(a) Form of Disclosures

Section 226.5(a)(5) is added to provide a cross reference to rules governing the electronic delivery of disclosures in Sec. 226.36.

5(b) Time of Disclosures

5(b)(2) Periodic Statements

Comment 5(b)(2)(ii)-3 is revised. Under the current rules for open-end plans, creditors may permit, but may not require, consumers to pick up their periodic statements in lieu of receiving them automatically. In 1997, the staff commentary was revised to clarify that consumers who elect to pick up written periodic statements might, instead, receive copies of such statements by electronic means (62 FR 10193, March 6, 1997). Consumers making that election, however, would not waive their right to also obtain written periodic statements. Accordingly, the comment did not specify the manner or form of consumers' consent to electronic copies of their statement.

As discussed below, Sec. 226.36(b) as adopted sets forth the general rule that a creditor subject to Regulation Z may provide disclosures electronically only if the creditor complies with section 101(c) of the E-Sign Act. This requirement applies to electronic statements provided in accordance with comment 5(b)(2)(ii)-3, and the comment has been revised accordingly.

Section 226.5a Credit and Charge Card Applications and Solicitations

Regulation Z requires credit and charge card issuers to provide cost disclosures in certain applications and solicitations to open card accounts.

5a(a) General Rules

5a(a)(2) Form of Disclosures

Regarding the timing of the Sec. 226.5a disclosures, the 1999 proposal stated that for electronic card applications or solicitations, the disclosures must appear on the screen before the

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application or solicitation appears. Under the final rule, a consumer

must be able in all cases to access the disclosures at the time the blank application or reply form is made available by electronic communication, such as on a card issuer's Internet web site. Card issuers have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer to the fact that rate, fee and other cost information either precedes or follows the application or reply form. Alternatively, card issuers may provide a link to electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A card issuer need not confirm that the consumer has read the disclosures. As adopted, comment 5a(a)(2)-8 has been modified from the 1999 proposal to provide additional guidance. Similar guidance is provided for home-equity lines of credit and adjustable rate mortgage (ARM) loans.

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

Section 226.5a(b)(1)(ii) is revised and (iii) is added to address the accuracy of the APR in connection with electronic credit and charge card applications and solicitations. Where terms are disclosed in card applications and solicitations, card issuers are required to disclose the periodic rate that would apply, expressed as an APR. For fixed rates, card issuers are required to disclose the APR currently available under the plan. For variable rates, the APR disclosed in a direct mail solicitation must be accurate within 60 days before mailing; in a take-one, within 30 days before printing.

As part of the 1999 proposals, the Board proposed a single standard for APR accuracy in electronic disclosures: for a variable-rate plan, the disclosed APR would be deemed accurate if it is one that was in effect within 30 days before the disclosures are sent to the consumer's e-mail address. If disclosures are made available at another location such as the card issuer's Internet web site, the APR would be one in effect within the last 30 days. Commenters generally supported applying a uniform standard to both the e-mail and web site posting methods of providing applications or solicitations. The final rule is adopted as proposed.

5a(c) Direct-mail and Electronic Applications and Solicitations

The format and content requirements differ for cost disclosures in card applications or solicitations sent in direct mail campaigns and for those made available to the general public such as in ``take-one'' applications and catalogs or magazines. Disclosures accompanying direct mail applications and solicitations must be presented in a table. Disclosures in a take-one also may be presented in a table with the same content as for direct mail, but the act and regulation permit two alternatives for format and content: (1) A narrative that describes how finance charges and other charges are assessed, and (2) a statement that costs are involved, along with a toll-free telephone number to call for further information.

With regard to the format and content of disclosures, the Board's 1999 proposals generally applied the same rules to card applications and solicitations made in the electronic context as apply to paper-based applications and solicitations. Card issuers sending applications or solicitations to a consumer's e-mail address would follow the direct mail rules; applications or solicitations made available to the general public would follow the take-one rules. Commenters generally supported the proposal.

The Board believes that in the context of on-line credit shopping, consumers would benefit from consistent disclosures among credit card issuers, whether consumers view an application or solicitation from an

e-mail address or at another location such as a card issuer's web site. The option to distribute paper-based take-ones without cost information addresses, in part, a concern that the disclosures may become inaccurate with no practical means to recall the take-ones. This concern is not an issue for disclosures posted on an Internet web site. Requiring all card issuers to post a table on web sites that have credit and charge card applications or solicitation would not be unduly burdensome. Pursuant to the Board's general authority under section 105(a) to create exceptions to carry out the purposes of the act and the Board's specific authority under section 127(c)(5) to modify disclosures to carry out the purposes of the rules affecting applications and solicitations, Sec. 226.5a(c) is revised to apply the direct mail rules to electronic credit and charge card applications or solicitations.

Section 226.5b Requirements for Home-Equity Plans

5b(b) Time of Disclosures

Comment 5b(b)-7 is added to provide guidance on the timing of disclosures for electronic applications for a home-equity line of credit (HELOC). Regulation Z requires that disclosures (including a brochure) be provided at the time an application for a HELOC is provided to a consumer. The disclosures generically describe the creditor's HELOC product. In the September 1999 proposal, comment 5b(b)-7 stated that if a HELOC application is made available electronically, such as on a creditor's Internet web site, the disclosures must appear before the application is provided.

The final comment has been modified to provide guidance similar to that given for credit and charge card applications and solicitations under Sec. 226.5a and ARM loans under Sec. 226.19(b). In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application or reply form is made available by electronic communication, such as on a creditor's Internet web site.

5b(c) Duties of Third Parties

Under Sec. 226.5b(c), persons other than the creditor that provide applications for a HELOC must give the consumer a brochure at the time the application is given, and in some cases also provide other disclosures. Section 226.5b(c)(2) is added to clarify that such persons who are required to comply with Regulation Z may use electronic communication to do so, as long as the requirements of Sec. 226.36(b) are satisfied.

Section 226.15 Right of Rescission

15(b)(1) Notice of Right to Rescind

Section 226.15 provides that in certain open-end plans secured by a consumer's principal dwelling, the consumer has three business days to rescind the transaction after becoming obligated on the debt. Consumers with an ownership interest in the dwelling used as security must receive (1) cost disclosures about the transaction, and (2) two copies of a notice that explains consumers' rescission rights and how to effect rescission, including a form the consumer may use to notify the creditor if the consumer decides to rescind the transaction.

Section 226.15(b)(1) is revised to permit a creditor to provide a single rescission notice by electronic communication to each consumer with an ownership interest in the dwelling who has affirmatively consented to

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electronic delivery of the notice. Comment 15(b)-1 is revised to provide guidance on electronic rescission notices. Similar guidance is provided under Sec. 226.23 regarding rescission notices for closed-end transactions.

Section 226.16 Advertising

16(c) Catalogs or Other Multiple-page Advertisements; Electronic Advertisements

Stating certain credit terms in an advertisement for an open-end credit plan triggers the disclosure of additional terms. Section 226.16(c) permits creditors using a multiple-page advertisement to state the additional disclosures in a table or schedule as long as the triggering credit terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. Of the few comments received on this provision, commenters supported expanding the use of a table or schedule to electronic advertisements. Section 226.16(c) is revised to cover electronic advertisements as proposed and a conforming amendment in the staff commentary is made to comment 16(c)(1)-1. Comment 16(c)(1)-2 is added as proposed to provide guidance in complying with the requirements of this section for creditors using electronic communication.

Subpart C--Closed-end Credit

Section 226.17 General Disclosure Requirements

17(a) Form of Disclosures

Section 226.17(a)(3) is added to provide a cross reference to rules governing the electronic delivery of disclosures in Sec. 226.36.

17(g) Mail or Telephone Orders--Delay in Disclosures

Section 226.17(g) allows creditors to defer TILA disclosures when a consumer makes a credit purchase or requests credit by mail, telephone, or any other written or ``electronic communication'' without face-to-face or direct solicitation by the creditor. The deferral rule pre-dates online or Internet banking; the term ``electronic communication'' included credit requests by telegraph transmissions and facsimiles. The rationale underlying the deferral is that creditors cannot provide transaction-specific disclosures in written form as required by the regulation at the time of the consumer's purchase or request. In such cases, creditors may delay providing disclosures until the first payment due date, provided certain information has been ``made available in written form'' before the consumer's request.

The interim final rule provides as did the 1999 proposal that creditors offering loan products by electronic communication (for example, those offered on the Internet) may not delay providing disclosures under Sec. 226.17(g). The difficulties in providing disclosures for credit requests by mail or telephone are not present for credit requests received by e-mail or through the Internet. Thus, specific disclosures must be provided before transactions are consummated using electronic communication as defined in Sec. 226.36. The language has been revised from the proposal to clarify that the deferral rule in Sec. 226.17(g) remains available to creditors offering loan products by facsimile machine (as well as mail and telephone) without face-to-face or direct telephone solicitation.

Section 226.19 Certain Residential Mortgage and Variable-rate Transactions

19(b) Certain Variable-rate Transactions

For certain loans with variable-rate features (loans where the APR may increase during the loan term) that are secured by the consumer's principal dwelling, creditors must provide consumers with a booklet and other disclosures generically describing the creditor's product when an application is given (or a nonrefundable fee is paid, whichever occurs earlier). In the September 1999 proposal, comment 19(b)-2 was revised to address the timing for providing disclosures required by Sec. 226.19(b) when electronic communication is used. The final rule has been modified consistent with the rules for providing disclosures with applications and solicitations for credit and charge cards under Sec. 226.5a and applications for home-equity lines of credit under Sec. 226.5b. In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application is made available by electronic communication, such as on a creditor's Internet web site.

Section 226.23 Right of Rescission

23(b)(1) Notice of Right to Rescind

Section 226.23 provides that in certain transactions secured by a consumer's principal dwelling, the consumer has three business days to rescind the transaction after becoming obligated on the debt. Consumers with an ownership interest in the dwelling used as security must receive (1) cost disclosures about the transaction, and (2) two copies of a notice that explains consumers' rescission rights and how to effect rescission, including a form the consumer may use to notify the creditor if the consumer decides to rescind the transaction. Consistent with amendments to Sec. 226.15(b)(1) regarding rescission notices provided electronically for open-end credit plans, Sec. 226.23(b)(1) is amended to permit a creditor delivering rescission notices electronically to send a single notice to each consumer with an ownership interest in the dwelling used as security (rather than two notices). Comment 23(b)-1 is added to provide guidance on electronic rescission notices.

Section 226.24 Advertising

Regulation Z prescribes certain disclosures for closed-end loan advertisements. Although the specific requirements differ somewhat for closed-end loans and open-end credit plans, the revisions adopted by the Board for closed-end loan advertisements are substantially similar to those discussed above for open-end credit plans.

24(b) Advertisement of Rate of Finance Charge

Section 226.24(b) permits creditors to state a simple annual rate of interest or periodic rate in addition to the APR, as long as the rate is stated in conjunction with, but not more conspicuously than, the APR. Comment 24(b)-6 contains guidance on how this rule applies to an electronic advertisement.

24(d) Catalogs and Other Multiple-page Advertisements; Electronic Advertisements

Stating certain credit terms in an advertisement for closed-end credit triggers the disclosure of additional terms. Section 226.24(d) permits creditors using a multiple-page advertisement to state the additional disclosures in a table or schedule as long as the triggering credit terms appearing elsewhere in the advertisement refer to the page where the table or schedule is printed. Section 226.24(d) is revised to cover electronic advertisements, as proposed, and a conforming amendment is made to comment 24(d)-2. Comment 24(d)-4 is added as proposed to provide guidance in complying with the requirements of this

section for creditors using electronic communication.

Subpart D--Miscellaneous

Section 226.27 Language of Disclosures

To provide consistency among the regulations, Sec. 226.27 is revised as proposed to permit creditors to provide disclosures in languages other than

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English as long as disclosures in English are available to consumers who request them.

Subpart E--Special Rules for Certain Home Mortgage Transactions

Section 226.31 General Rules

31(b) Form of Disclosures

Section 226.31(b) is revised to provide a cross reference to rules governing the electronic delivery of disclosures in Sec. 226.36.

Subpart F--Electronic Communication

Section 226.36 Requirements for Electronic Communication

36(a) Definition

As adopted, the definition of the term ``electronic communication'' remains substantially unchanged from the 1999 proposals. Section 226.36(a) limits the term to a message transmitted electronically that can be displayed on equipment as visual text; an example is a message displayed on a personal computer monitor screen. Thus, audio-and voice-response telephone systems are not included. Because the rule permits the use of electronic communication to satisfy the statutory requirement for written disclosures that must be clear and conspicuous, the Board believes visual text is an essential element of the definition. Creditors that accommodate vision-impaired consumers by providing disclosures that do not use visual text must also provide disclosures using visual text.

Some commenters asked for clarification that the definition was not intended to preclude the use of devices other than personal computers, which also can display visual text. The equipment on which the text message is received is not limited to a personal computer, provided the visual display used to deliver the disclosures meets the ``clear and conspicuous'' format requirement, discussed below.

36(b) General Rule

Effective October 1, 2000, the E-Sign Act permits creditors to provide disclosures using electronic communication, if the creditor complies with the consumer consent requirements in Section 101(c). Under section 101(c) of the E-Sign Act, creditors must provide specific information about the electronic delivery of disclosures before obtaining the consumer's affirmative consent to receive electronic disclosures. The consent requirements in the E-Sign Act are similar but not identical to the Board's 1999 proposal. Accordingly, Sec. 226.36(b) sets forth the general rule that creditors subject to Regulation Z may provide disclosures electronically if the creditor complies with section 101(c) of the E-Sign Act.

The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under TILA other than a

requirement that disclosures be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing and retainability rules and the clear and conspicuous standard. Comment 36(b)-1 contains this guidance.

Presenting Disclosures in a Clear and Conspicuous Format

Electronic disclosures must be clear and conspicuous, as is the case for all written disclosures under TILA and Regulation Z. See Secs. 226.5(a)(1), 226.17(a)(1), and 226.31(b). A creditor must provide electronic disclosures using a clear and conspicuous format. Also, in accordance with the E-Sign Act: (1) The creditor must disclose the requirements for accessing and retaining disclosures in that format; (2) the consumer must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and (3) the creditor must provide the disclosures in accordance with the specified requirements. Comment 36(b)-2 contains this guidance.

Commenters posed a few questions about the applicability of the clear and conspicuous standard to particular situations. Some asked whether electronic advertisements or other unrelated promotional information may appear on the same screen as mandatory disclosures that are posted on an Internet web site. Except to the extent required by the regulation, disclosures do not have to be provided separately from other information. Advertisements should not be integrated into the text of the disclosure in a manner that violates the clear and conspicuous standard.

Commenters also had questions about the use of navigational tools with electronic disclosures. For example, some believed that such tools might be helpful in directing consumers to related information that explains the terminology used in the disclosures. Many Internet web sites use navigational tools that are conspicuous through the use of bold text, larger fonts, different colors, underlining, or other methods of highlighting. Such tools are not per se prohibited so long as they are not used in a manner that would violate the clear and conspicuous standard.

Providing Timely Disclosures

Disclosures delivered electronically must comply with existing timing requirements under TILA and Regulation Z. See, for example, Secs. 226.5(b), 226.17(b), and 226.31(c). Commenters on the Board's 1999 proposals requested specific guidance that an electronic disclosure would be considered timely based on the time it is sent by e-mail or posted on an Internet web site, regardless of when the consumer receives or reads the disclosure.

Under the final rule, consistent with rules for disclosures that are sent by postal mail, disclosures provided by e-mail are timely when they are sent by the required time. Disclosures posted periodically at an Internet web site are timely if, by the required time, the creditor both makes the disclosures available at that location and, in accordance with Sec. 226.36(d)(2), sends a notice alerting the consumer that the disclosures have been posted. For example, under Sec. 226.9, creditors offering open-end plans must provide a change-in-terms notice to consumers at least 15 days in advance of certain changes. For a change-in-terms notice posted on the Internet, a creditor must both post the notice and notify consumers of its availability at least 15 days in advance of the change. Comment 36(b)-4 contains this guidance.

Certain disclosures must be provided before the consumer becomes obligated. For example, when a creditor permits the consumer to consummate a closed-end transaction on-line, the consumer must be required to access the disclosures required under Sec. 226.18 before becoming obligated. A link to the disclosures satisfies the timing rule if the consumer cannot bypass the disclosures before becoming

obligated. Or, the disclosures in this example must automatically appear on the screen, even if multiple screens are required to view the entire disclosure. Comment 36(b)-3 contains this guidance, as proposed, but has been expanded to provide the following additional guidance.

For disclosures that are not required to be segregated and thus may be interspersed into the text of another document, the creditor may satisfy the requirement to provide the disclosures if the document appears automatically or via a nonbypassable link. For example, when a creditor permits the consumer to open a credit card account and make a purchase immediately thereafter, disclosures required under Sec. 226.6 must be provided before the first

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transaction. The consumer must be required to access the disclosures (or the document containing the disclosures such as a credit card agreement) before becoming obligated for the plan (or before the first transaction).

Some industry commenters believed that requiring disclosures to automatically appear or be accessed by the consumer is cumbersome and unnecessary. Some commenters suggested that the Board allow the required disclosures to be accessible via a clearly marked navigational tool; they believe that once the tool is provided, the disclosure should be deemed to have been provided to the consumer.

TILA and Regulation Z require that creditors provide or send disclosures to consumers. It is not sufficient for creditors to provide a bypassable navigational tool that merely gives consumers the option of receiving the disclosures. Such an approach reduces the likelihood that consumers will notice and receive the disclosures. The final rule ensures that consumers actually see cost disclosures provided electronically so that they have the opportunity to read them when shopping for credit or before becoming obligated for an extension of credit, as applicable.

Commenters on the various proposals requested guidance regarding the creditor's duty in cases where a creditor cannot provide timely disclosures because an automated loan machine or other automated equipment controlled by the creditor malfunctions or otherwise fails to operate properly. Where the creditor controls the equipment and disclosures are required at that time, a creditor might not be liable for failing to provide timely disclosures if the defense in section 130(c) of TILA is available.

Providing Disclosures in a Form the Consumer May Keep

Under TILA and Regulation Z, many of the disclosures required to be in writing must be in a form the consumer can retain. Electronic disclosures are subject to this requirement. Comment 36(b)-5 contains guidance on this requirement.

Consumers may communicate electronically with creditors 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 TILA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to access and retain the disclosures, the creditor also must send them to the consumer's designated e-mail address or make them available at another location, for example, on the creditor's Internet web site, where the information may be retrieved at a later date.

Where the creditor controls the equipment providing the electronic disclosures (for example, an automated loan machine or computer terminal located in the creditor's lobby), the creditor must ensure that the consumer has the opportunity to retain the required information. Comment 36(b)-6 contains guidance on this requirement.

36(c) When Consent is Required

Under the E-Sign Act, consumers must affirmatively consent before they receive electronic disclosures ``relating to a transaction'' if the disclosures are required by law or regulation to be in writing. Section 226.36(c) is added to provide that certain disclosures are not deemed to be related to a transaction for purposes of the E-Sign Act's consumer consent provision. These include disclosures in connection with advertisements (Sec. 226.16 and Sec. 226.24), credit and charge card applications and solicitations (Sec. 226.5a), HELOC and ARM loan applications (Sec. 226.5b and Sec. 226.19(b)), and disclosures under Sec. 226.17(g)(1)-(5). In some circumstances, disclosures are available to the general public, such as advertisements and solicitations; in other circumstances, consumers receiving disclosures with a solicitation for credit may not enter in the credit transaction. Those entering into credit transactions will ultimately receive disclosures subject to the consent requirements.

36(d) Address or Location to Receive Electronic Communication

Consistent with the 1999 proposals, the interim rule provides that creditors may deliver electronic disclosures by sending them to a consumer's e-mail address. Alternatively, the rule provides that creditors may make the disclosures available at another location such as an Internet web site. If the creditor makes a disclosure available at such a location, the creditor effectively delivers the disclosure by sending a notice alerting the consumer when the disclosure can be accessed and preserving the disclosure at the location for at least 90 days. The time period for keeping disclosures available at a location such as a creditor's Internet web site under the interim rule differs from the 1999 proposals, based on commenters' concerns as discussed below.

36(d)(1)

For purposes of Sec. 226.36(d), a consumer's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the creditor, as proposed. This guidance is contained in comment 36(d)(1)-1.

An electronic address would not include systems that permit communication only between the consumer and the creditor, for example, home-banking programs that allow consumers to communicate directly with a creditor on-line with the use of a computer and modem. These systems, like a creditor's web site accessed via the Internet, give consumers access to information about their accounts at a location controlled by the creditor. In both cases, the creditor determines how long account information will be available to the consumer. Consumers who receive disclosures at their e-mail address, however, may choose when to review, and for how long to retain, account information. Consumers who receive disclosures by contacting a creditor's site need to be alerted when the information is first available in order to ensure that they have the opportunity to access the information before it is removed. Thus, disclosures provided using systems such as home-banking programs are treated in the same manner as disclosures made available at an Internet web site, and a notice alerting the consumer when disclosures are posted must be sent, by e-mail or to a postal address, at the creditor's option.

36(d)(2)

Under Sec. 226.36(d)(2)(i) of the interim rule, for disclosures made available at an Internet web site, a notice alerting the consumer when disclosures are posted must be sent by e-mail (or to a postal address, at the creditor's option). Section 226.36(d)(2)(i) requires that the alert notice identify the account involved and the address or other location where the disclosure is available. Comment 36(d)(2)-1 provides guidance on the level of detail required in identifying the

account.

As proposed, under Sec. 226.36(d)(2)(ii) of the interim rule, disclosures provided at an Internet web site must remain available for at least 90 days. The requirement seeks to ensure that consumers have adequate time to access and retain a disclosure 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 computer malfunctions, travel, or illness. Making the periodic statement for 90 days also

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ensures that it will be available for a sufficient time in most cases to allow alleged errors to be resolved under the procedures in Regulation Z. The 90-day period is uniform for all disclosures, for ease of compliance. Comment 36(d)(2)-2 is added to provide that during this period, the actual disclosures must be available to the consumer, but the creditor has discretion to determine whether they should be available at the same location for the entire period.

Some industry commenters believed the 90-day time period is reasonable and feasible. About an equal number of commenters believed it was too burdensome and costly; some of these commenters suggested periods that ranged from 30 to 60 days.

The 1999 proposals provided that after the 90-day time period, disclosures would be available upon consumers' request, generally for 24 months, in the same format as initially provided to the consumer. The 24-month period is consistent with a creditor's duty to retain records that evidence compliance. Consumer advocates supported the proposed retention period; some recommended that disclosures should be available upon request for the length of the contractual relationship with the consumer.

Industry commenters strongly opposed the 24-month period. Many believed that keeping copies of electronic disclosures actually provided to consumers for that period of time would be costly and burdensome. Moreover, industry commenters believed that once a consumer has accessed the disclosures, the consumer rather than the creditor should have the duty to retain them for future reference. They also noted that under existing record retention requirements applicable to paper disclosures, a creditor need only demonstrate compliance with the rules, but need not retain copies of the actual disclosures provided to consumers.

The requirement for creditors to provide duplicate disclosures upon request for 24 months has not been adopted. A creditor's duty to retain evidence of compliance for 24 months remains unchanged.

36(d)(3) Exceptions

Section 226.36(d)(3) is added to make clear that the requirements of paragraphs (i) and (ii) of Sec. 226.36(d)(2) do not apply to disclosures in credit and charge card applications and solicitations mailed or otherwise distributed to the general public (Sec. 226.5a), certain credit advertisements (Secs. 226.16 and .24), cost information for representative transactions made available to consumers or to the public (Sec. 226.17(g)), or disclosures for certain home-secured credit (Secs. 226.5b and 19(b)).

36(e) Redelivery

Industry commenters on the 1998 proposal asked for clarification that sending the electronic disclosures complies with the regulation, and that institutions are not required to confirm that the consumer actually received them. Consumer advocates asked that institutions be required to verify the delivery of disclosures by return receipt, in the case of e-mail. In the 1999 proposals, the Board solicited comment on the need for and the feasibility of such a requirement.

Consumer advocates believe that e-mail systems are not yet sufficiently reliable, and that safeguards are necessary to ensure that consumers actually receive disclosures. Industry commenters stated that a return receipt requirement would be costly and burdensome, and would require creditors to monitor return receipts in every case to determine that individual consumers received the disclosures.

Section 101(c) of the E-Sign Act requires that consumers consent electronically, or confirm their consents electronically, in a manner that reasonably demonstrates that the consumer can access the information that the creditor will be providing. This requirement seeks to verify at the outset that the consumer is actually capable of receiving the information in the electronic format being used by the creditor. After the consumer consents, the E-Sign Act also requires creditors to notify consumers of changes that materially affect consumers' ability to access electronic disclosures.

The interim rule does not impose a verification requirement because the cost and burden associated with verifying delivery of all disclosures would not be warranted. When electronic disclosures are returned undelivered, however, Sec. 226.36(e) imposes a duty to attempt redelivery (either electronically or to a postal address) based on address information in the institution's own files. Unlike paper disclosures delivered by the postal service, there generally is no commonly-accepted mechanism for reporting a change in electronic address or for forwarding e-mail. Where a creditor actually knows that the delivery of an electronic disclosure did not take place, the creditor should take reasonable steps to effectuate delivery in some way. For example, if an e-mail message to the consumer (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if the creditor sends the disclosure to a different e-mail address or postal address that the creditor has on file. Sending the disclosures a second time to the same electronic address would not be sufficient if the institution has a different address for the consumer on file. Comment 36(e)-1 provides this guidance.

This redelivery requirement is limited to situations where the electronic communication cannot be delivered and does not apply to situations where the disclosure is delivered but, for example, cannot be read by the consumer due to technical problems with the consumer's software. A creditor's duty to redeliver a disclosure under Sec. 226.36(e) does not affect the timeliness of the disclosure. Creditors comply with the timing requirements of the regulation when a disclosure is initially sent in a timely manner, even though the disclosure is returned undelivered and the creditor is required under Sec. 226.36(e) to take reasonable steps to attempt redelivery.

36(f) Electronic Signatures

The E-Sign Act provides that electronic signatures have the same validity as handwritten signatures. Section 106 of the act defines an electronic signature. Section 226.36(f) is added to incorporate the E-Sign Act's definition of electronic signature into the regulation. To comply with the E-Sign Act, an electronic signature must be executed or adopted by a consumer with the intent to sign the record. Accordingly, regardless of the technology used to meet this requirement, the process must evidence the consumer's identity. Comment 36(f)-1 provides this guidance.

Additional Issues

Document Integrity

The interim rule does not impose document integrity standards. Consumer advocates and others expressed concerns that electronic

documents can be altered more easily than paper documents. They say that consumers' ability to enforce rights under the consumer protection laws could be impaired, in some cases, if the authenticity of disclosures they retain cannot be demonstrated.

Institutions are generally required to retain evidence of compliance with the Board's consumer regulations. Accordingly, the Board requested comment on the feasibility of requiring institutions to have systems in place capable of detecting whether or not information has been altered, or to use

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independent certification authorities to verify disclosure documents.

Consumer advocates strongly supported document integrity requirements (including the use of certification authorities) that would apply to all-electronic disclosures. Signatures, notary seals, and verification procedures such as recordation are used to protect against alterations for transactions memorialized in paper form. Consumer advocates believe that comparable verification procedures are needed for electronic disclosures as well.

Industry commenters opposed mandatory document integrity standards for electronic disclosures. Because the technology in this area is still evolving, they believe that mandatory standards would be premature. Others believe that imposing document integrity standards or requiring the use of certification authorities would be costly to implement.

The Board recognizes the concerns about document integrity, but believes it is not practicable at this time to impose document integrity standards for consumer disclosures or mandate the use of independent certification authorities. Effective methods may be too costly. Other less costly methods may deter alterations in some cases, but would not necessarily ensure document integrity.

Moreover, the issue of document integrity affects electronic commerce generally and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Section 104(b)(3) of the E-Sign Act authorizes federal or state regulatory agencies to specify performance standards to assure the accuracy, record integrity, and accessibility of records that are required to be retained, but prohibits the agencies from requiring the use of a particular type of software or hardware in order to comply with record retention requirements. Technology is likely to develop to protect electronic contracts and other legal documents. Thus, it seems premature for the Board to specify any particular standards or methods for consumer disclosure at this time.

V. Form of Comment Letters

Comment letters should refer to Docket No. R-1043, and, when possible, should use a standard typeface with a font size of 10 or 12. 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 1/2 inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

VI. Regulatory Flexibility Analysis

The Board has reviewed these interim amendments to Regulation Z, in accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604). Two of the three requirements of a final regulatory

flexibility analysis under the Act are (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of those issues, and a statement of the changes made in the final rule in response to the comments. These two areas are discussed above.

The third requirement of the analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. This interim final rule is designed to provide creditors with an alternative method of providing disclosures; the rule will relieve compliance burden by giving creditors flexibility in providing disclosures required by the regulation. Overall, the costs of providing electronic disclosures are not expected to have significant impact on small entities. The expectation is that providing electronic disclosures may ultimately reduce the costs associated with providing disclosures.

VII. 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 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 control number. The OMB control number is 7100-0199.

The collection of information that is revised by this rulemaking is found in 12 CFR Part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1601 et seq.) to evidence compliance with the requirements of the Regulation Z and the Truth in Lending Act (TILA). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, 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 revisions provide that creditors may deliver disclosures electronically upon obtaining consumers' affirmative consent in accordance with the E-Sign Act. The revisions also provide guidance to institutions on the timing and delivery of electronic disclosures, to ensure that consumers have adequate opportunity to access and retain the information.

With respect to state member banks, it is estimated that there are 1000 respondent/recordkeepers and an average frequency of 136,294 responses per respondent each year. The current annual burden is estimated to be 1,886,392 hours. No comments specifically addressing the burden estimate were received, therefore, the numbers remain unchanged. There is estimated to be no additional cost burden and no capital or start up cost associated with the interim final rule.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

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: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of

Management and Budget, Paperwork Reduction Project (7100-0199),
Washington, DC 20503.

VIII. Solicitation of Comments Regarding the Use of ``Plain
Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ``plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the interim rule is clearly stated and effectively organized, and how the Board might make the rule easier to understand.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

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For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226--TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart B--Open-End Credit

2. Section 226.5 is amended by adding a new paragraph (a)(5) as follows:

Sec. 226.5 General disclosure requirements.

(a) Form of disclosures. * * *

(5) Electronic communication. For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see Sec. 226.36.

* * * * *

3. Section 226.5a is amended by revising paragraph (b)(1)(ii), adding a new paragraph (b)(1)(iii), and revising paragraph (c) as follows:

Sec. 226.5a Credit and charge card applications and solicitations.

* * * * *

(b) Required disclosures. * * *

(1) Annual percentage rate. * * *

(ii) When variable rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable rate disclosures are provided under paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the

disclosures. Disclosures provided by electronic communication are subject to paragraph (b)(1)(iii) of this section.

(iii) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before mailing the disclosures to a consumer's electronic mail address. If disclosures are made available at another location such as the card issuer's Internet web site, the annual percentage rate must be one in effect within the last 30 days.

* * * * *

(c) Direct-mail and electronic applications and solicitations. The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided by electronic communication.

* * * * *

4. Section 226.5b is amended by redesignating paragraph (c) as paragraph (c)(1), adding a heading for paragraph (c)(1), and adding a new paragraph (c)(2) as follows:

Sec. 226.5b Requirements for home-equity plans.

* * * * *

(c) Duties of third parties. (1) General. * * *

(2) Electronic communication. Persons other than the creditor that are required to comply with paragraphs (d) and (e) of this section may use electronic communication in accordance with the requirements of Sec. 226.36, as applicable.

* * * * *

5. Section 226.15 is amended by revising the first sentence of the introductory text of paragraph (b) as follows:

Sec. 226.15 Right of rescission.

* * * * *

(b) Notice of right to rescind. In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered by electronic communication as provided in Sec. 226.36(b)). * * *

* * * * *

6. Section 226.16 is amended by revising paragraph (c) as follows:

Sec. 226.16 Advertising.

* * * * *

(c) Catalogs or other multiple-page advertisements; electronic advertisements. (1) If a catalog or other multiple-page advertisement, or an advertisement using electronic communication, gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in Sec. 226.6 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an

advertisement using electronic communication complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

* * * * *

Subpart C--Closed-End Credit

7. Section 226.17 is amended by:

- a. Adding a new paragraph (a)(3); and
- b. Revising the introductory text in paragraph (g).

Sec. 226.17 General disclosure requirements.

(a) Form of disclosures. * * *

(3) Electronic communication. For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see Sec. 226.36.

* * * * *

(g) Mail or telephone orders--delay in disclosures. If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form to the consumer or to the public before the actual purchase order or request:

* * * * *

8. Section 226.23 is amended by revising the first sentence of paragraph (b)(1) as follows:

Sec. 226.23 Right of rescission.

* * * * *

(b)(1) Notice of right to rescind. In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered by electronic communication as provided in Sec. 226.36(b)). * * *

* * * * *

9. Section 226.24 is amended by revising paragraph (d) as follows:

Sec. 226.24 Advertising.

* * * * *

(d) Catalogs or other multiple-page advertisements; electronic advertisements. (1) If a catalog or other multiple-page advertisement, or an advertisement using electronic communication, gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (c)(2) of this section, it shall be considered a single advertisement if:

- (i) The table or schedule is clearly and conspicuously set forth; and
- (ii) Any statement of terms of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the

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catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an advertisement using electronic communication complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Subpart D--Miscellaneous

10. Section 226.27 is revised to read as follows:

Sec. 226.27 Language of disclosures.

Disclosures required by this regulation may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request. This requirement for providing English disclosures on request does not apply to advertisements subject to Secs. 226.16 and 226.24.

Subpart E--Special Rules for Certain Home Mortgage Transactions

11. Section 226.31 is amended by revising paragraph (b) to read as follows:

Sec. 226.31 General rules.

* * * * *

(b) Form of disclosures. (1) General. The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep.

(2) Electronic communication. For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see Sec. 226.36.

* * * * *

Sec. 226.35 [Reserved]

12. Add and reserve a new Sec. 226.35.

13. Add a new subpart F to part 226 to read as follows:

Subpart F--Electronic Communication

Sec. 226.36 Requirements for electronic communication.

(a) Definition. ``Electronic communication'' means a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) General rule. In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 et

seq.) and the rules of this part, a creditor may provide by electronic communication any disclosure required by this part to be in writing.

(c) When consent is required. Under the E-Sign Act, a creditor is required to obtain a consumer's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under Secs. 226.5a, 226.5b(d) and 226.5b(e), 226.16, 226.17(g)(1) through (5), 226.19(b) and 226.24 are deemed not to be related to a transaction.

(d) Address or location to receive electronic communication. A creditor that uses electronic communication to provide disclosures required by this part shall:

(1) Send the disclosure to the consumer's electronic address; or

(2) Make the disclosure available at another location such as an Internet web site; and

(i) Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the creditor's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

(3) Exceptions. A creditor need not comply with paragraphs (d)(2)(i) and (ii) of this section for the disclosures required under Secs. 226.5a, 226.5b(d) and 226.5b(e), 226.16, 226.17(g)(1) through (5), 226.19(b) and 226.24.

(e) Redelivery. When a disclosure provided by electronic communication is returned to a creditor undelivered, the creditor shall take reasonable steps to attempt redelivery using information in its files.

(f) Electronic signatures. An electronic signature as defined under the E-Sign satisfies any requirement under this part for a consumer's signature or initials.

14. In Supplement I to Part 226, the following amendments are made:

a. In Section 226.5--General Disclosure Requirements, under Paragraph 5(b)(2)(ii), paragraph 3. is revised.

b. In Section 226.5a--Credit and Charge Card Applications and Solicitations, under 5a(a)(2) Form of Disclosures, a new paragraph 8. is added.

c. In Section 226.5b--Requirements for Home Equity Plans, under 5b(b) Time of Disclosures, a new paragraph 7. is added.

d. In Section 226.15--Right of Rescission, under 15(b) Notice of Right to Rescind., two new sentences are added at the end of paragraph 1.

e. In Section 226.16--Advertising, the heading 16(c) Catalogs and Multiple-page Advertisements is revised and under Paragraph 16(c)(1)., paragraph 1. is revised and a new paragraph 2. is added.

f. In Section 226.19--Certain Residential Mortgage and Variable-Rate Transactions, under 19(b) Certain variable-rate transactions., paragraph 2. is revised.

g. In Section 226.23--Right of Rescission, under 23(b) Notice of Right to Rescind., two new sentences are added at the end of paragraph 1.

h. In Section 226.24--Advertising, under 24(b) Advertisement of rate of finance charge, a new paragraph 6. is added.

i. In Section 226.24--Advertising, the heading 24(d) Catalogs and multiple-page advertisements is revised and under 24(d), paragraph 2. is revised and a new paragraph 4. is added.

j. A new Subpart F is added to Supplement I.

The amendments read as follows:

Supplement I to Part 226--Official Staff Interpretations

* * * * *

Subpart B--Open-End Credit

Section 226.5--General Disclosure Requirements

* * * * *

(b)(2) Periodic Statements

* * * * *

Paragraph 5(b)(2)(ii)

* * * * *

3. Calling for periodic statements. When the consumer initiates a request, the creditor may permit, but may not require, consumers to pick up their periodic statements. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement must be made available in accordance with the 14-day rule. If the consumer wishes to receive the statement by electronic communication, the creditor must comply with the consumer consent requirements as provided in Sec. 226.36(b).

* * * * *

Section 226.5a--Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General Rules

5a(a)(2) Form of Disclosures

* * * * *

8. Timing of disclosures for electronic applications or solicitations. In all cases, a consumer must be able to access the disclosures at the time the blank application

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or reply form is made available by electronic communication, such as on a card issuer's Internet web site. Card issuers have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, card issuers may provide a link to electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A card issuer need not confirm that the consumer has read the disclosures.

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Section 226.5b--Requirements for Home-Equity Plans

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5b(b) Time of Disclosures

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7. Applications available by electronic communication. In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application or reply form is made available by electronic communication, such as on a creditor's Internet web site. Creditors have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer the consumer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, creditors may provide a link to electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A creditor need not confirm that the consumer has read the disclosures or brochure.

* * * * *

Section 226.15--Right of Rescission

* * * * *

15(b) Notice of Right to Rescind

1. Who receives notice. * * * If e-mail is used, the creditor complies with Sec. 226.15(b)(1) if one notice is sent to each co-owner. Each co-owner must consent to receive electronic disclosures and each must designate an electronic address for receiving the disclosure.

* * * * *

Section 226.16--Advertising

* * * * *

16(c) Catalogs or Other Multiple-page Advertisements; Electronic Advertisements

* * * * *

Paragraph 16(c)(1)

1. General. Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or an electronic advertisement. The rule applies only if the advertisement contains one or more of the triggering terms from Sec. 226.16(b).

2. Electronic communication. If an advertisement using electronic communication contains the table or schedule permitted under Sec. 226.16(c)(1), any statement of terms set forth in Sec. 226.6 appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.

* * * * *

Subpart C Closed--End Credit

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Section 226.19--Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain Variable-rate Transactions

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2. Timing. A creditor must give the disclosures required under this section at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

i. Intermediary agent or broker. In cases where a creditor receives a written application through an intermediary agent or broker, however, footnote 45b provides a substitute timing rule requiring the creditor to deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. (See comment 19(b)-3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) This three-day rule also applies where the creditor takes an application over the telephone.

ii. Telephone request. In cases where the consumer merely requests an application over the telephone, the creditor must include the early disclosures required under this section with the application that is sent to the consumer.

iii. Mail solicitations. In cases where the creditor solicits applications through the mail, the creditor must also send the disclosures required under this section if an application form is included with the solicitation.

iv. Conversion. In cases where an open-end credit account will convert to a closed-end transaction subject to this section under a written agreement with the consumer, disclosures under this section may be given at the time of conversion. (See the commentary to Sec. 226.20(a) for information on the timing requirements for Sec. 226.19(b)(2) disclosures when a variable-rate feature is later added to a transaction.)

v. Electronic applications. In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application form is made available by electronic communication, such as on a creditor's Internet web site. Creditors have flexibility in satisfying this requirement. For example, if a link is not used, the application form must clearly and conspicuously refer the consumer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, creditors may provide a link to electronic disclosures as long as consumers cannot bypass the disclosure before submitting the application form. Or the disclosures could automatically appear on the screen when the application form appears. A creditor need not confirm that the consumer has read the disclosures or brochure.

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Section 226.23--Right of Rescission

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23(b) Notice of right to rescind

1. Who receives notice. * * * If e-mail is used, the creditor complies with Sec. 226.23(b)(1) if one notice is sent to each co-owner. Each co-owner must consent to receive electronic disclosures and each must designate an electronic address for receiving the disclosure.

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Section 226.24--Advertising

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24(b) Advertisement of Rate of Finance Charge

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6. Electronic communication. A simple annual rate or periodic rate that is applied to an unpaid balance may be stated only if it is provided in conjunction with an annual percentage rate. In an advertisement using electronic communication, the consumer must be able to view both rates simultaneously. This requirement is not satisfied if the consumer can view annual percentage rate only by use of a link that takes the consumer to information appearing at another location.

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24(d) Catalogs or Other Multiple-page Advertisements; Electronic Advertisements

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2. General. Section 226.24(d) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement, or in an electronic advertisement. The rule applies only if the advertisement contains one or more of the triggering terms from Sec. 226.24(c)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under Sec. 226.24(c)(2) and so is not covered by Sec. 226.24(d).

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4. Electronic communication. If an advertisement using electronic communication contains the table or schedule permitted under Sec. 226.24(d)(1), any statement of terms set forth in Sec. 226.24(c)(1) appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information (but see comment 24(b)-6).

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Subpart F--Electronic Communication

Section 226.36--Requirements for Electronic Communication

36(b) General Rule

1. Relationship to the E-Sign Act. The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under this part other than a requirement that disclosures be in paper form, and it does not affect the content or timing of

disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and conspicuous standard. For example, to satisfy the clear and conspicuous standard for disclosures, electronic disclosures must use visual text.

2. Clear and conspicuous standard. A creditor must provide electronic disclosures using a clear and conspicuous format. Also, in accordance with the E-Sign Act:

i. The creditor must disclose the requirements for accessing and retaining disclosures in that format;

ii. The consumer must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and

iii. The creditor must provide the disclosures in accordance with the specified requirements.

3. Timing and effective delivery when a consumer becomes obligated on-line.

i. When a creditor permits the consumer to consummate a closed-end transaction on-line, the consumer must be required to access the disclosures required under Sec. 226.18 before becoming obligated. A link to the disclosures satisfies the timing rule if the consumer cannot bypass the disclosures before becoming obligated. Or the disclosures in this example must automatically appear on the screen, even if multiple screens are required to view the entire disclosure. The creditor is not required to confirm that the consumer has read the disclosures.

ii. For disclosures that are not required to be segregated and thus may be interspersed into the text of another document, the creditor may satisfy the requirement to provide the disclosures if the document appears automatically or via a nonbypassable link. For example, when a creditor permits the consumer to open a credit card account and make a purchase immediately thereafter, disclosures required under Sec. 226.6 must be provided before the first transaction. The consumer must be required to access the disclosures (or the document containing the disclosures such as a credit card agreement) before becoming obligated for the plan (or before the first transaction). The creditor is not required to confirm that the consumer has read the disclosures.

4. Timing and effective delivery for disclosures provided periodically. Disclosures provided by e-mail are timely based on when the disclosures are sent. Disclosures posted at an Internet web site such as periodic statements, or change-in-terms and other notices, are timely when the creditor has both made the disclosures available and sent a notice alerting consumer that the disclosures have been posted. For example, under Sec. 226.9, creditors offering open-end plans must provide a change-in-terms notice to consumers at least 15 days in advance of certain changes. For a change-in-terms notice posted on the Internet, a creditor must both post the notice and notify consumers of its availability at least 15 days in advance of the change.

5. Retainability of disclosures. Creditors satisfy the requirement that disclosures be in a form that the consumer may keep if electronic disclosures are delivered in a format that is capable of being retained (such as by printing or storing electronically). The format must also be consistent with the information required to be provided under section 101(c)(1)(C)(i) of the E-Sign Act (15 U.S.C. 7001(c)(1)(C)(i)) about the hardware and software requirements for accessing and retaining electronic disclosures.

6. Disclosures provided on creditor's equipment. A creditor that controls the equipment providing electronic disclosures to consumers

(for example, a computer terminal in a creditor's lobby or an automated loan machine at a public kiosk) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and conspicuous format and in a form that the consumer may keep. For example, if disclosures are required at the time of an on-line transaction, the disclosures must be sent to the consumer's e-mail address or must be made available at another location such as the creditor's Internet web site, unless the creditor provides a printer that automatically prints the disclosures.

36(d) Address or Location to Receive Electronic Communication

Paragraph 36(d)(1)

1. Electronic address. A consumer's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the creditor.

Paragraph 36(d)(2)

1. Identifying account involved. A creditor may identify a specific account in a variety of ways and is not required to identify an account by reference to the account number. For example, where the consumer has only one credit card account, and no confusion would result, the card issuer may refer to ``your credit card account.'' If the consumer has two credit card accounts, the card issuer may, for example, differentiate accounts based on the card program or by using a truncated account number.

2. 90-day rule. The actual disclosures provided to consumer must be available for at least 90 days, but the creditor has discretion to determine whether they should be available at the same location for the entire period.

36(e) Redelivery

1. E-mail returned as undeliverable. If an e-mail to the consumer (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if, for example, the creditor sends the disclosure to a different e-mail address or postal address that the creditor has on file for the consumer. Sending the disclosures a second time to the same electronic address is not sufficient if the creditor has a different address for the consumer on file.

36(f) Electronic Signatures

1. Relationship to E-Sign Act. The E-Sign Act provides that electronic signatures have the same validity as handwritten signatures. Section 106 of the E-Sign Act (15 U.S.C. 7006) defines an electronic signature. To comply with the E-Sign Act, an electronic signature must be executed or adopted by a consumer with the intent to sign the record. Regardless of the technology used to meet this requirement, the process must evidence the consumer's identity.

By order of the Board of Governors of the Federal Reserve System, March 23, 2001.
Robert deV. Frierson,

Associate Secretary of the Board.
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