

Transmittal

TR-404

Federal Register, Vol. 72, No. 217, pp. 63462-63477



Number TR-404

On November 9, 2007 the Federal Reserve Board issued the attached final rule amending Regulation Z, which implements the Truth in Lending Act, and the official staff commentary to the regulation, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001.

■ b. In *Section 213.7—Advertising*, under 7(b)(1) *Amount Due at Lease Signing or Delivery*, paragraph 3 is removed.

■ c. In *Section 213.7—Advertising*, under 7(b)(2) *Advertisement of a Lease Rate*, paragraph 1., the last two sentences are removed.

■ d. In *Section 213.7—Advertising*, under 7(c) *Catalogs or Other Multipage Advertisements; Electronic Advertisements*, paragraph 2. is revised.

The amendments read as follows:

**SUPPLEMENT I TO PART 213—
OFFICIAL STAFF COMMENTARY TO
REGULATION M**

* * * * *

Section 213.7—Advertising

* * * * *

7(b)(2) Advertisement of a Lease Rate

7(c) * * *

2. *Cross references.* A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule with the disclosures required under § 213.7(d)(2)(i) through (v). If one of the triggering terms listed in § 213.7(d)(1) appears in a catalog, or in a multiple-page or electronic advertisement, it must clearly direct the consumer to the page or location where the table, chart, or schedule begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 31, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–21699 Filed 11–8–07; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1284]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is amending Regulation Z, which implements the Truth in Lending Act, and the official staff commentary to the regulation, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The 2001 interim final rules addressed the

timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Because compliance with the 2001 interim final rules has not been mandatory, withdrawal of these provisions from the *Code of Federal Regulations* reduces confusion about the status of the provisions and simplifies the regulation.

In addition, the Board is adopting final amendments to Regulation Z to provide guidance on the electronic delivery of disclosures. For example, the final rules provide that when an application for a credit card is accessed by a consumer in electronic form, disclosures may be provided to the consumer in electronic form on or with the application without regard to the consumer consent and other provisions of the E-Sign Act. Similar final rules are being adopted under other consumer fair lending and financial services regulations administered by the Board.

DATES: The final rule is effective December 10, 2007. The mandatory compliance date is October 1, 2008.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory 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.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq.*, was enacted in 2000. The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic

disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

The E-Sign Act, including the special consumer notice and consent provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, creditors are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing under Regulation Z if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

II. Board Proposals and Interim Rules Regarding Electronic Disclosures

On March 30, 2001, the Board published for comment interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation Z (66 FR 17,329). Similar interim final rules for Regulations B, E, M, and DD (implementing the Equal Credit Opportunity Act, the Electronic Fund Transfer Act, the Consumer Leasing Act, and the Truth in Savings Act, respectively) were published on March 30, 2001 (66 FR 17,322) (Regulation M) and April 4, 2001 (66 FR 17,779, 66 FR 17,786, and 66 FR 17,795) (Regulations B, E, and DD, respectively). Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Creditors and other persons, as applicable, generally were required to obtain consumers' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act. The interim final rules also incorporated many of the provisions that were part of earlier regulatory proposals issued by the Board regarding electronic disclosures.¹

¹ On May 2, 1996, the Board proposed to amend Regulation E to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14,528, March 25, 1998) and similar proposals under Regulations B, M, Z, and DD (63 FR 14,552, 14,538, 14,548, and 14,533, respectively, March 25, 1998). Based on comments received on the 1998 proposals, in 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999).

Under the 2001 interim final rules, disclosures could be sent to an e-mail address designated by the consumer, or could be made available at another location, such as an Internet Web site. If the disclosures were not sent by e-mail, creditors would have to provide a notice to consumers (typically by e-mail) alerting them to the availability of the disclosures. Disclosures posted on a Web site would have to be available for at least 90 days to allow consumers adequate time to access and retain the information. Creditors also would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files.

Commenters on the interim final rules identified significant operational and information security concerns with respect to the requirement to send the disclosure or an alert notice to an e-mail address designated by the consumer. For example, commenters stated that some consumers who choose to receive electronic disclosures do not have e-mail addresses or may not want personal financial information sent to them by e-mail. Commenters also noted that e-mail is not a secure medium for delivering confidential information and that consumers' e-mail addresses frequently change. The commenters also opposed the requirement for redelivery in the event a disclosure was returned undelivered. In addition, many commenters asserted that making the disclosures available for at least 90 days, as required by the interim final rule, would increase costs and would not be necessary for consumer protection.

In August 2001, in response to comments received, the Board lifted the previously established October 1, 2001 mandatory compliance date for all of the interim final rules. (66 FR 41439, August 8, 2001.) Thus, creditors are not required to comply with the interim final rules. Since that time, the Board had not taken further action with respect to the interim final rules on electronic disclosures in order to allow electronic commerce, including electronic disclosure practices, to continue to develop without regulatory intervention and to allow the Board to gather further information about such practices.

In April 2007, the Board proposed to amend Regulation Z and the official staff commentary by (1) withdrawing portions of the 2001 interim final rule that restate or cross-reference provisions of the E-Sign Act and accordingly are unnecessary; (2) withdrawing other portions of the interim final rule that the Board now believes may impose undue

burdens on electronic banking and commerce and may be unnecessary for consumer protection; and (3) retaining the substance of certain provisions of the interim final rule that provide regulatory relief or guidance regarding electronic disclosures. (72 FR 21141, April 30, 2007.) Similar amendments were also proposed by the Board under Regulations B, E, M, and DD (72 FR 21125, 72 FR 21131, 72 FR 21135, and 72 FR 21155, respectively). In addition, the Board proposed to amend Regulation Z to implement certain provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law 109-8, 119 Stat. 23 (the "Bankruptcy Act"), that amend TILA and relate to electronic credit card disclosures.

III. Summary of the Final Rule

The Board received about 25 comments on the April 2007 proposal, primarily from creditors and their representatives. Most of the financial industry commenters generally supported the proposal, although some provided suggestions for clarifications or changes to particular elements of the proposal. A comment letter was also submitted on behalf of four consumer groups. The consumer group commenters suggested a number of changes to strengthen consumer protections. The comments are discussed in more detail in the Section-by-Section Analysis below.

For the reasons discussed below, the Board is now adopting amendments to Regulation Z in final form, largely as proposed in April 2007. As stated in the proposal, because compliance with the 2001 interim final rules has not been mandatory, the final rule will reduce confusion about the status of the electronic disclosure provisions and simplify the regulation. (Certain provisions in the 2001 interim rules, including provisions addressing foreign language disclosures, were not affected by the lifting of the mandatory compliance date and became final in 2001; thus, those provisions are not dealt with in this rulemaking.) The Board is also adopting certain provisions that are identical or similar to provisions in the 2001 interim rules in order to enhance the ability of consumers to shop for credit online, minimize the information-gathering burdens on consumers, and provide guidance or eliminate a substantial burden on the use of electronic disclosures, as discussed further below.

As stated above, the Board also proposed to implement certain provisions of the Bankruptcy Act that amended TILA and relate to electronic

disclosures. Action on the proposed provisions to implement the Bankruptcy Act is being deferred. The same revisions are contained in the Board's proposed amendments to the Regulation Z rules for open-end credit, which were published for comment in June 2007 (72 FR 32,948, June 14, 2007). The Board will consider the provisions relating to the Bankruptcy Act in connection with its final action on the rules for open-end credit after considering the comments submitted on the June 2007 proposal.

Since 2001, industry and consumers have gained considerable experience with electronic disclosures. During that period, the Board has received no indication that consumers have been harmed by the fact that compliance with the interim final rules is not mandatory. The Board also has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and "phishing" (i.e., prompting consumers to reveal confidential personal or financial information through fraudulent e-mail requests that appear to originate from a creditor, government agency, or other trusted entity) that have become more pronounced since 2001. Finally, the Board is eliminating certain aspects of the 2001 interim final rule, such as provisions regarding the availability and retention of electronic disclosures, as unnecessary in light of current industry practices.

With regard to disclosures required to be provided on or with a credit application or solicitation (the "shopping disclosures") or in an advertisement, the 2001 interim final rule allowed creditors to provide these disclosures electronically without regard to the consumer consent or other provisions of the E-Sign Act. The Board reasoned that these disclosures, which would be available to the general public while shopping for credit, did not necessarily "relate to a transaction," which is a prerequisite for triggering the E-Sign consumer consent provisions, and thus were not subject to the consent provisions. Some commenters on the interim final rules agreed with the result but did not agree with the Board's rationale.

In the April 2007 proposal, the Board stated that, upon further consideration, it did not believe it was necessary to determine whether or not these disclosures are related to a transaction. Instead, pursuant to the Board's authority under section 105(a) of TILA, as well as under section 104(d) of the

E-Sign Act,² the Board proposed to specify the circumstances under which certain disclosures may be provided to a consumer in electronic form, rather than in writing as generally required by Regulation Z, without obtaining the consumer's consent under section 101(c) of the E-Sign Act.

Commenters supported the Board's approach with regard to this issue. This final rule adopts the approach in the April 2007 proposal. The Board continues to believe that creditors should not be required to obtain the consumer's consent in order to provide shopping or advertising disclosures to the consumer in electronic form if the consumer accesses an application, solicitation, or advertisement containing those disclosures in electronic form, such as at an Internet Web site. The Board believes that when shopping for credit or viewing credit advertising online, consumers would not be harmed if the E-Sign consent procedures do not apply and would obtain significant benefits by having timely access to shopping and advertising disclosures in electronic form. Conversely, consumers who choose to apply for credit online would be unduly burdened if they had to consent in accordance with the E-Sign Act in order to access application forms that must be accompanied by disclosures. The Board also believes that consumers' ability to shop for credit online and compare the terms of various credit offers could be substantially diminished if consumers had to consent in accordance with the E-Sign Act in order to access solicitations and advertisements that must be accompanied by disclosures. Applying the consumer consent provisions of the E-Sign Act to these disclosures could impose substantial burdens on electronic commerce and make it more difficult for consumers to gather information and shop for credit.

At the same time, the Board recognizes that consumers who shop or

apply for credit online may not want to receive other disclosures electronically. Therefore, with respect to account-opening disclosures, periodic statements, and change-in-terms notices, creditors are required to obtain the consumer's consent, in accordance with the E-Sign Act, to provide such disclosures in electronic form, or else provide written disclosures.

Finally, as proposed, certain provisions that restate or cross-reference the E-Sign Act's general rules regarding electronic disclosures (including the consumer consent provisions) and electronic signatures are being deleted as unnecessary, because the E-Sign Act is a self-effectuating statute. The revisions to Regulation Z and the official staff commentary are described more fully below in the Section-by-Section Analysis.

IV. Section-by-Section Analysis

12 CFR Part 226 (Regulation Z)

Subpart B—Open-end Credit

Section 226.5 General Disclosure Requirements

Section 226.5(a) prescribes the form of disclosures required for open-end credit plans. Section 226.5(a)(1) generally requires creditors to provide open-end credit disclosures in writing and in a form that the consumer may keep. As proposed, the Board is revising § 226.5(a)(1) to clarify that creditors may provide open-end credit disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some creditors may provide open-end credit disclosures to consumers both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those creditors, the duplicate electronic form of the open-end credit disclosures may be provided to consumers without regard to the consumer consent or other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's open-end credit disclosure requirements.

Section 226.5(a)(1) is also revised, as proposed, to provide that the open-end credit disclosures required by §§ 226.5a (credit card applications and solicitations), 226.5b (home equity credit line applications), and 226.16 (open-end credit advertising) may be provided to the consumer in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions of the E-Sign Act. Commenters supported this aspect of the proposal. The Board

believes that this will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will facilitate shopping for credit by enabling consumers to receive important disclosures online at the same time they access an electronic application, solicitation, or advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to access an online application, solicitation, or advertisement is potentially burdensome and could discourage consumers from shopping for credit online. Moreover, 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.

Section 226.5(a)(5) in the 2001 interim final rule refers to § 226.36, the section of the interim final rule setting forth general rules for electronic disclosures. Because the Board is deleting § 226.36, as discussed below, § 226.5(a)(5) is also deleted, as proposed.

The 2001 interim final rule revised comment 5(b)(2)(ii)–3 to reference the E-Sign Act's consumer consent requirements. As proposed, this language is being deleted as unnecessary because the E-Sign Act is a self-effectuating statute.

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(a) General Rules

Section 226.5a(a)(2) prescribes the form of disclosures required with credit and charge card applications and solicitations. The Board proposed to amend § 226.5a(a)(2) by adding a new paragraph (v) to provide that if a consumer accesses an application or solicitation for a credit or charge card in electronic form, such as on a home computer, the disclosures required on or with the application or solicitation must also be provided to the consumer in electronic form. The Board proposed to add comment 5a(a)(2)–9 to clarify this point and also to make clear that if a consumer is provided with a paper application or solicitation, the required disclosures must be provided in paper form on or with the application or solicitation (and not, for example, by including a reference in the paper application or solicitation to the Web site where the disclosures are located).

² Section 105(a) of TILA provides that regulations prescribed by the Board under TILA "may provide for such adjustments and exceptions * * * as in the judgment of the Board, are necessary or proper to effectuate the purposes of [TILA], * * * or to facilitate compliance [with the requirements of TILA]." Section 104(d) of the E-Sign Act authorizes federal agencies to adopt exemptions for specified categories of disclosures from the E-Sign notice and consent requirements, "if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers." For the reasons stated in this Federal Register notice, the Board believes that these criteria are met in the case of the application, solicitation, and advertising disclosures. In addition, the Board believes TILA section 105(a) authorizes the Board to permit institutions to provide disclosures electronically, rather than in paper form, independent of the E-Sign Act.

Many creditor commenters urged the Board to revise the regulation and commentary to permit disclosures to be given in paper form in appropriate cases, even where an application or solicitation is in electronic form. In particular, commenters noted that requiring electronic disclosures could present problems for applications taken in person using electronic means. Commenters stated, for example, that a consumer or creditor employee might complete an electronic application by entering information at a terminal or kiosk in the creditor's office. These commenters noted that paper disclosures would be more appropriate in such cases, because the applicant would be able to retain them. For example, a loan officer could give the disclosures to the consumer, or in the case of an unattended kiosk, the kiosk could have a printer to provide paper disclosures. (Although the credit card application and solicitation disclosures are not required to be given in retainable form, application-related disclosures for other types of accounts raise the same issue and are required to be in retainable form.)

Some creditor commenters argued that the proposed requirement would contravene the E-Sign Act, based on the provisions in E-Sign that state (1) that the statute does not require any person to accept or use electronic records in place of paper, and (2) that any regulations interpreting E-Sign may not add to its requirements. Creditor commenters suggested that, at a minimum, the regulation should provide an exception to allow paper disclosures for in-person electronic applications. Consumer group commenters stated that the regulation should not only permit, but should require, paper disclosures in the case of in-person electronic applications. For example, the commenters noted, a door-to-door solicitor could otherwise simply display certain disclosures to a consumer on the screen of a laptop computer, even though the consumer would have no way to later access the disclosures.

One creditor commenter suggested that, in addition to permitting paper disclosures for electronic applications, the regulation should also permit electronic disclosures for paper applications without consumers' consent in certain cases. For example, the commenter suggested, a basic or short-form disclosure could be provided in paper form along with the paper application, together with a Web site where a more complete disclosure could be obtained.

In the final regulation, new § 226.5a(a)(2)(v) is revised to state that if an application or solicitation is accessed by the consumer in electronic form, the required application- or solicitation-related disclosures may (rather than must) be provided in electronic form. The proposal to require electronic disclosures for credit card applications and solicitations that are accessed electronically was intended to ensure that the disclosures are provided "on or with" the application or solicitation in compliance with the timing and delivery requirements of Regulation Z. Section 226.5a(a)(2) already requires that the credit card application and solicitation disclosures be provided on or with an application or solicitation, and this requirement applies to electronic as well as paper applications; the only added requirement under the proposal would have been to require that, in the case of an electronic application, the disclosures be in electronic form.

Where a consumer accesses and submits an application form using a home computer via a card issuer's Web site, the card issuer must provide the disclosures in electronic form with the application form on the Web site in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the issuer instead mailed paper disclosures to the consumer, this requirement would not be met. This guidance is stated in new comment 5a(a)(2)–9.

In contrast, if a consumer is physically present in the card issuer's office, and accesses and submits an electronic application—such as via a terminal or kiosk—the Board believes the issuer could provide disclosures in paper form and comply with the timing and delivery ("on or with") requirements of the regulation. In addition, as discussed by the commenters, paper disclosures may be preferable in this situation because they can be retained by the consumer. Therefore, paper disclosures are permissible in the case of in-person electronic applications in a card issuer's office, when the timing and delivery requirements are met. This guidance is also stated in new comment 5a(a)(2)–9.

The final regulation, however, does not require paper disclosures for such in-person electronic applications, as suggested by the consumer group commenters. Electronic disclosures would comply with the regulation for these applications in some cases. For example, for an electronic in-person credit card application in a card issuer's office, the issuer could display the required disclosures to the consumer on

a terminal or kiosk screen. The requirement to provide disclosures in a form the consumer may retain does not apply to the credit card application disclosures, so this procedure would comply with the regulation. However, the Board anticipates that card issuers will provide disclosures in a retainable form in this situation and would consider further revisions to the regulation to address this issue if necessary. (In other cases—for example, for some of the home equity line of credit application disclosures, and all of the adjustable-rate mortgage (ARM) application disclosures, discussed below—the retainability requirement does apply, and therefore creditors would likely have to provide paper disclosures for in-person applications in a creditor's office for these types of credit.)

New comment 5a(a)(2)–9 is modified from the proposal to provide the guidance discussed above. In addition, the portion of the proposed comment stating that paper applications must be accompanied by paper disclosures has been deleted as unnecessary. For example, if a credit card application in paper form did not contain all of the required § 226.5a disclosures, but instead referred the consumer to a Web site where some or all of the disclosures could be found, the application would not be in compliance with the Regulation Z requirement that the disclosures be provided in a timely manner on or with the application. In addition, the provisions that state that electronic disclosures may be provided without regard to the consumer consent or other provisions of the E-Sign Act are limited to situations where the application or solicitation itself is in electronic form. Thus, if a card issuer wanted to provide electronic disclosures for a paper application or solicitation (for example, where a paper application is submitted in person at the issuer's office), the issuer would first have to comply with the E-Sign notice and consent requirements.

Comment 5a(a)(2)–8 of the 2001 interim final rule states that a consumer must be able to access the electronic disclosures at the time the application form or solicitation reply form is made available by electronic communication, and lists a number of alternative methods by which card issuers may satisfy this requirement. The Board proposed to revise this comment to clarify that the listed methods are intended to be examples, not an exhaustive list. Proposed revised comment 5a(a)(2)–8 also cross-references comment 5a(a)(2)–2.ii., which was added in 2000 and specifies

how the tabular disclosures required by § 226.5a can be “prominently located” if provided on or with electronic applications and solicitations.

Creditor commenters generally urged that the “non-bypassable link” example in the comment be deleted, or at least that the final comment make clear that the various methods of presenting disclosures electronically are only examples and not requirements. (In the “non-bypassable link” method, a card issuer would provide, on the application or solicitation web page, a link to the required disclosures that would require the consumer to access the disclosures before submitting the application or solicitation reply form.)

Comment 5a(a)(2)–8 has been modified to clarify that the various methods of presenting disclosures electronically are not the exclusive means of satisfying the disclosure requirements, but examples. In addition, another example has been added, and other modifications have been made for clarity. Of course, any method used would have to ensure that the disclosures are provided (not merely made available) to the consumer, clearly and conspicuously, in a timely manner on or with the application or solicitation.

The Bankruptcy Act amends Section 127(c) of TILA to require that credit card application and solicitation disclosures provided “using the Internet or other interactive computer service” must be “readily accessible to consumers in close proximity” to the solicitation. 15 U.S.C. 1637(c)(7). The April 2007 proposal contained a discussion of whether the Board should retain the existing guidance in comment 5a(a)(2)–2.ii on “prominent location” to interpret the “close proximity” standard of the Bankruptcy Act. The same issue is raised in the Board’s proposed amendments to the Regulation Z rules for open-end credit, which were published for comment in June 2007 (72 FR 32,948, June 14, 2007). The Board will consider this issue in connection with its final action on the rules for open-end credit after considering the comments submitted on the June 2007 proposal.

5a(b) Required disclosures and 5a(c) Direct-mail and electronic applications and solicitations

The Bankruptcy Act provides that the disclosures for electronic credit card offers must be “updated regularly to reflect the current policies, terms, and fee amounts.” The April 2007 proposal contained proposed amendments to §§ 226.5a(b)(1), 226.5a(c), and 226.5a(e), as well as the staff commentary, to implement this requirement,

particularly with regard to the accuracy of variable-rate APR disclosures in credit card applications and solicitations. The same proposals are also contained in the June 2007 proposal to revise the rules for open-end credit under Regulation Z. As stated above, the Board will consider revisions related to the Bankruptcy Act in connection with its final action on the June 2007 proposal.

Section 226.5b Requirements for Home-Equity Plans

Section 226.5b(a) sets forth requirements for the form of disclosures required to be made on or with applications for home equity lines of credit (HELOCs). The Board proposed to amend § 226.5b(a) by adding a new paragraph (3) to provide that if a consumer accesses a HELOC application in electronic form, such as on a home computer, the disclosures required on or with the application must also be provided to the consumer in electronic form. The Board proposed to add comment 5b(a)(3)–1 to clarify this point and also to make clear that if a consumer is provided with a paper application, the required disclosures must be provided in paper form on or with the application (and not, for example, by including a reference in the paper application to the Web site where the disclosures are located).

As in the case of the credit card application and solicitation disclosures required under § 226.5a, discussed above, many creditor commenters urged the Board to revise the regulation and commentary to permit disclosures to be given in paper form in appropriate cases, even where a HELOC application is in electronic form. Commenters mentioned the same reasons as for the credit card disclosures, focusing in particular on problems that might arise in the context of in-person electronic applications (involving, for example, a consumer completing the application in a creditor’s office by entering information into a terminal or kiosk). Consumer group commenters suggested that the regulation not only should permit, but should require, paper disclosures in the case of in-person electronic HELOC applications.

For the same reasons as discussed above in connection with credit card application and solicitation disclosures, in the final regulation, new § 226.5b(a)(3) is revised to state that if an application is accessed by the consumer in electronic form, the required disclosures may (rather than must) be provided in electronic form. New comment 5b(a)(3)–1 has been modified from the proposal to provide

guidance parallel to that in new comment 5a(a)(2)–9 for credit card applications and solicitations. Where a consumer accesses an electronic HELOC application in person in a creditor’s office, the creditor could provide disclosures in paper form and comply with the timing and delivery requirements of the regulation. In addition, as discussed by the commenters, paper disclosures may be preferable in this situation because they can be retained by the consumer. Indeed, paper disclosures would likely be necessary to comply with the timing requirements and the requirement to provide the home-equity brochure in a form the consumer may retain under § 226.5b(e) in the case of an in-person electronic application in the creditor’s office. (The Board anticipates that creditors will provide the other HELOC application disclosures, under § 226.5b(d), in retainable form even though not technically required, and would consider further revisions to the regulation to address this issue if necessary.) In addition, the portion of the proposed comment stating that paper applications must be accompanied by paper disclosures has been deleted as unnecessary, parallel to comment 5a(a)(2)–9.

Section 226.5b(c) states that persons, other than the creditor, that provide HELOC applications to consumers must provide the required home equity disclosures in certain cases. The 2001 interim final rule added a new § 226.5b(c)(2) to clarify that such third parties may use electronic disclosures. As proposed, this provision is being deleted as unnecessary, because the E-Sign Act is a self-effectuating statute and permits any person to use electronic records subject to the conditions set forth in the Act.

Comment 5b(b)–7 of the 2001 interim final rule states that a consumer must be able to access the electronic disclosures at the time the application form is made available by electronic communication. This comment is substantially similar to comment 5a(a)(2)–8 of the 2001 interim final rule, discussed above.

The Board proposed to delete comment 5b(b)–7 and substitute a new comment 5b(a)(1)–5 in its place, which generally would parallel the content of proposed revised comment 5a(a)(2)–8. The new comment would describe alternative methods for presenting electronic disclosures, which are examples rather than an exhaustive list.

As in the case of proposed revised comment 5a(a)(2)–8, discussed above, creditor commenters addressing the proposed comment generally urged that the “non-bypassable link” example in

the comment be deleted, or at least that the final comment make clear that the various methods of presenting disclosures electronically are only examples and not requirements. The comment has been modified to clarify that the methods are not the exclusive means of satisfying the disclosure requirements, but examples. In addition, another example has been added, and other modifications have been made for clarity. Of course, similarly to electronic credit card applications, any method used for providing disclosures for electronic HELOC applications would have to ensure that the disclosures are provided (not merely made available) to the consumer, clearly and conspicuously, in a timely manner on or with the application.

Section 226.15 Right of Rescission

Section 226.15 gives consumers the right to rescind certain open-end credit plans secured by their principal dwelling. Under § 226.15(b), creditors must provide two copies of a notice of this right to each consumer entitled to rescind. For written (paper) disclosures, this allows consumers to return one copy to the creditor if they exercise the right of rescission and retain the second copy. The 2001 interim final rule added language permitting creditors to provide only one copy of the rescission notice to each consumer when the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act. The April 2007 proposal retained this provision from the 2001 interim final rule. The few commenters that addressed this proposal supported it. The final rule adopts this provision as proposed with minor wording changes for clarification. It does not appear that consumers would benefit by receiving two electronic copies of rescission notices.

In the 2001 interim final rule, comment 15(b)–1 was revised to state that if there is more than one property owner, a single rescission notice may be sent to each property owner if electronic communication is used, that each co-owner must consent to electronic disclosures, and that each must designate an electronic (e-mail) address to be used for this purpose. In the April 2007 proposal, the Board proposed to modify comment 15(b)–1 by deleting the requirement to use e-mail. The statement that each co-owner must consent to electronic disclosures was also proposed to be deleted.

A few commenters expressed concern about the proposed deletion of the statement that each co-owner must consent to electronic disclosures, and

suggested that the Board clarify this issue. The E-Sign Act clearly states that any consumer to whom written disclosures are required to be given must affirmatively consent to the use of electronic disclosures before such disclosures may be used in place of paper disclosures; accordingly, the Board believes that it is unnecessary to address this issue in Regulation Z. In addition, a commenter suggested that creditors should be able to provide a single electronic rescission notice to co-owners who have the same e-mail address or other electronic point of contact, and also that a creditor may require that consumers who wish to receive disclosures electronically provide such a single contact point. The Board believes that these suggestions might not be consistent with the Truth in Lending Act, which requires delivery of the rescission notice and disclosures to each consumer entitled to rescind. Accordingly, the revisions to comment 15(b)–1 are adopted as proposed.

Section 226.16 Advertising

Section 226.16 contains requirements for advertisements for open-end credit, and in particular requires that if an advertisement includes certain “trigger terms” (such as an APR), the advertisement must also include certain required disclosures (such as the minimum finance charge and transaction charges and annual fees).

Section 226.16(c) relates to catalogs and other multiple-page advertisements and to electronic advertisements. The Board proposed to add a new paragraph (3) to § 226.16(c) to provide that if a consumer accesses an advertisement for open-end credit in electronic form, such as on a home computer, the disclosures required on or with the advertisement must also be provided to the consumer in electronic form on or with the advertisement. The Board proposed to add comment 16(c)(3)–1 to clarify this point and also to make clear that if a consumer accesses a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement (and not, for example, by including a reference in the paper advertisement to the Web site where the disclosures are located). Commenters did not address this aspect of the proposal.

In the final regulation, new § 226.16(c)(3) and comment 16(c)(3)–1 are not being adopted. Section 226.16(b) requires that if an advertisement includes trigger terms, the advertisement itself must “clearly and conspicuously set forth” the required disclosures. Therefore, under the existing regulation, providing paper

disclosures for an advertisement in electronic form, or vice versa, would not comply because the disclosures would not be set forth in the advertisement itself.

Section 226.16(c) provides that in a catalog or other multiple-page advertisement, the required disclosures need not be shown on each page where a “trigger term” appears, as long as each such page includes a cross-reference to the page where the required disclosures appear. The 2001 interim final rule (in § 226.16(c)(1) and (2), and comments 16(c)(1)–1 and –2) clarified that this multiple-page rule also applies to credit advertisements in electronic form. For example, if a “trigger term” appears on a particular web page, the additional disclosures may appear in a table or schedule on another web page and still be considered part of a single advertisement if there is a clear reference to the page or location where the table or schedule begins (which may be accomplished, for example, by including a link). In April 2007, the Board proposed to retain this provision. Only one commenter addressed the provision and expressed concern that consumers may not receive clear product information from online advertisements (noting, for example, that in one online advertisement the commenter was aware of, details were disclosed several linked pages away from the initial credit advertisement). The final rule retains this provision as proposed.

Subpart C—Closed-end Credit

Section 226.17 General Disclosure Requirements

Section 226.17(a) prescribes the form of disclosures required for closed-end credit. Section 226.17(a)(1) requires creditors to provide closed-end credit disclosures in writing and in a form that the consumer may keep. As proposed, § 226.17(a)(1) is revised to clarify that creditors may provide the closed-end credit disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some creditors may provide closed-end credit disclosures to consumers both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those creditors, the duplicate electronic form of the closed-end credit disclosures may be provided to consumers without regard to the consumer consent and other provisions of the E-Sign Act because the electronic form of the disclosure is not used to

satisfy the regulation's closed-end credit disclosure requirements.

Section 226.17(a)(1) is also revised, as proposed, to provide that the closed-end credit disclosures required by §§ 226.19(b) (adjustable-rate mortgage loan applications) and 226.24 (closed-end credit advertising) may be provided to the consumer in electronic form, and that the disclosures required by § 226.17(g) (delay in disclosures for mail or telephone transactions) may be made available to the consumer or to the public in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions of the E-Sign Act. Commenters supported this provision. The Board believes that this will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will assist consumers in shopping for credit by enabling them to receive important disclosures online at the same time they access an application or advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to access an online application or advertisement is potentially burdensome and could discourage consumers from shopping for credit online. Moreover, because these consumers are viewing the application or advertisement online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.

Section 226.17(a)(3) in the interim final rule cross-references § 226.36, the section of the interim final rule setting forth general rules for electronic disclosures. Because the Board is deleting § 226.36, as discussed below, § 226.17(a)(3) is also being deleted.

Section 227.17(g) applies where a creditor receives a request for credit by mail, telephone, or electronic communication without face-to-face or direct telephone solicitation. In these circumstances, the creditor may delay making the TILA disclosures for the credit transaction until the due date of the first payment, provided certain disclosures (specified in § 226.17(g)(1)–(5)) have been made available to the consumer or to the public generally (such as in a catalog or advertisement). For example, a retailer may mail catalogs to consumers, or provide advertising inserts in newspapers, containing information for ordering merchandise by telephone or mail. If a consumer calls the retailer, orders an item, and agrees to pay for the item by obtaining a closed-end extension of

credit from the retailer, the TILA closed-end disclosures would normally be required to be provided to the consumer before the consummation of the transaction. Since this is impracticable where the transaction is consummated by telephone, however, § 226.17(g) permits the retailer to delay providing the specific disclosures for the transaction, as long as the disclosures in § 226.17(g)(1)–(5), for representative amounts or ranges of credit, are included in the catalog or newspaper insert.

In the 2001 interim final rule, the Board replaced the term “electronic communication” in § 226.17(g) with “facsimile machine.” The Board explained that the rule in § 226.17(g) predated Internet commerce, and the term “electronic communication” was intended to cover credit requests by facsimile or telegram. The rationale underlying the rule was that creditors are unable to provide written transaction-specific disclosures at the time of the consumer's credit request where the request is made by facsimile or telegram, no less than in the case of requests made by telephone or mail. That practical problem does not exist, however, where a consumer requests credit at a Web site. Therefore, the Board believes it would be inappropriate to extend the application of § 226.17(g) to electronic requests for credit made at an Internet Web site. In the April 2007 proposal, the Board proposed to retain the amendment to § 226.17(g) from the 2001 interim final rule.

A few commenters discussed this provision, as well as other provisions of Regulation Z permitting delayed disclosures where an application is submitted by telephone. These commenters contended that the same reasons permitting disclosures to be delayed in the case of a telephone application might also apply in other situations, such as where applications are conducted through mobile hand-held electronic devices, ATMs, or computers not owned by the consumer (such as an employer's computer). The Board has determined not to extend the telephone provisions to additional situations; refer to the discussion below under “Delayed Disclosures.” Accordingly, § 226.17(g) remains unchanged in this regard.

Where § 226.17(g) does apply, *i.e.*, where the consumer requests credit by telephone, mail, or facsimile machine, the regulation requires the creditor (as a condition of delaying the transaction-specific TILA disclosures) to make available in written form to the consumer or the public the disclosures

set forth in § 226.17(g)(1)–(5) before the actual purchase order or request. The Board believes that these disclosures can appropriately be made available to the consumer or to the public either in electronic form (for example, on the creditor's Web site) or in paper form. In the April 2007 proposal, the Board proposed to amend § 226.17(g) to provide that the requirement to make available the § 226.17(g)(1)–(5) disclosures in written form to the consumer or to the public may be satisfied by making the disclosures available in electronic form, such as at a creditor's Web site. Thus, for example, a consumer might see information about a product on a retailer's Web site and order the product by telephone using closed-end credit; the transaction-specific disclosures could be delayed, provided the § 226.17(g)(1)–(5) disclosures are set forth on the Web site. In this situation, the E-Sign consent procedures would not have to be followed in order for the § 226.17(g)(1)–(5) disclosures to be provided in electronic form. On the other hand, if the consumer ordered the product via the Web site itself, the transaction-specific disclosures could not be delayed and would be required to be provided before consummation of the transaction. For the disclosures to be provided in electronic form in this situation, the E-Sign consent procedures would have to be followed. The amendment to § 226.17(g) is adopted as proposed.

Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions

Section 226.19(b) requires creditors to provide certain disclosures relating to adjustable-rate mortgage (ARM) loans secured by the consumer's principal dwelling. These disclosures must be provided when an application form is provided to the consumer or before the consumer pays a nonrefundable fee, whichever is earlier. The Board proposed to amend § 226.19 by adding a new paragraph (c) to provide that if a consumer accesses an ARM application in electronic form, the disclosures required on or with an application for an ARM must be provided to the consumer in electronic form. The Board also proposed to add comment 19(c)–1 to clarify this point, and to make clear that if a consumer is provided with a paper ARM application, the required disclosures must be provided in paper form on or with the application (and not, for example, by including a reference in the application to the Web site where the disclosures are located).

As in the case of the credit card application and solicitation disclosures required under § 226.5a and the HELOC application disclosures under § 226.5b, discussed above, many creditor commenters urged the Board to revise § 226.19(c) in the final regulation and the accompanying commentary provisions to permit disclosures to be given in paper form even where an ARM application is provided in electronic form. These commenters focused in particular on problems that might arise in the context of in-person electronic applications (involving, for example, a consumer in a creditor's office entering information at an electronic terminal to complete an application). Consumer group commenters suggested that the regulation should not only permit, but should require, paper disclosures in the case of in-person ARM applications made electronically.

For the same reasons as discussed above in connection with credit card application and solicitation disclosures and HELOC application disclosures, new § 226.19(c) is revised to state that if an application is accessed by the consumer in electronic form, the required disclosures may (rather than must) be provided in electronic form. New comment 19(c)-1 has been modified from the proposal to provide guidance parallel to that in new comments 5a(a)(2)-9 and 5b(a)(3)-1 for credit card applications and solicitations and for HELOC applications, respectively. Where a consumer accesses an electronic ARM application in person in a creditor's office, the creditor could provide disclosures in paper form and comply with the timing and delivery requirements of the regulation. Indeed, in the case of an in-person electronic application in a creditor's office, paper disclosures would likely be necessary to comply with the timing requirements and the requirement to provide the ARM disclosures in a form the consumer may retain. The portion of the proposed comment stating that paper applications must be accompanied by paper disclosures has been deleted as unnecessary, to parallel new comments 5a(a)(2)-9 and 5b(a)(3)-1.

Comment 19(b)-2 of the 2001 interim final rule states that a consumer must be able to access the electronic disclosures at the time the blank application form for ARMs is made available by electronic communication. The Board proposed to revise comment 19(b)-2 in a manner substantially similar to proposed comments 5b(a)(1)-5 and 5a(a)(2)-8, discussed above. The proposed revised comment described alternative methods for presenting

electronic disclosures, which are examples rather than an exhaustive list.

As in the case of proposed revised comments 5b(a)(1)-5 and 5a(a)(2)-8, discussed above, creditor commenters addressing the proposed comment generally urged that the "non-bypassable link" example in the comment be deleted, or at least that the final comment make clear that the various methods of presenting disclosures electronically are only examples and not requirements. The comment has been modified to clarify that the methods are not the exclusive means of satisfying the disclosure requirements, but rather examples. In addition, another example has been added, and other modifications have been made for clarity. Of course, any method used for providing disclosures for electronic ARM applications would have to ensure that the disclosures are provided (not merely made available) to the consumer, clearly and conspicuously, in a timely manner.

Section 226.23 Right of Rescission

Section 226.23 gives consumers the right to rescind certain closed-end mortgage loans secured by their principal dwelling. Under § 226.23(b), creditors must provide two copies of a notice of this right to each consumer entitled to rescind. For written (paper) disclosures, this allows consumers to return one copy to the creditor if they exercise the right of rescission and retain the second copy. The 2001 interim final rule added language permitting creditors to provide only one copy of the rescission notice to each consumer when the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act. The April 2007 proposal retained this provision from the 2001 interim final rule. The few commenters that addressed this proposal supported it. The final rule adopts this provision as proposed with minor wording changes. It does not appear that consumers would benefit by receiving two electronic copies of rescission notices.

In the 2001 interim final rule, comment 23(b)-1 was revised to state that if there is more than one property owner, a single rescission notice may be sent to each property owner if electronic communication is used, that each co-owner must consent to electronic disclosures, and that each must designate an electronic (e-mail) address to be used for this purpose. In the April 2007 proposal, the Board proposed to modify comment 23(b)-1 by deleting the requirement to use e-mail. The statement that each co-owner must

consent to electronic disclosures was also proposed to be deleted, as consent requirements are already set forth in the E-Sign Act.

The comments received by the Board on the proposed revisions to comment 15(b)-1 relating to rescission in the open-end context, discussed above, apply to closed-end rescission as well. See the discussion under § 226.15 above. Accordingly, the revisions to comment 23(b)-1 are adopted as proposed.

Section 226.24 Advertising

Section 226.24 contains requirements for advertisements for closed-end credit and requires that if an advertisement includes certain "trigger terms" (such as the payment amount), the advertisement must also include certain required disclosures (such as the APR, the amount or percentage of any downpayment, and the terms of repayment, as applicable).

Section 226.24(d) relates to catalogs and other multiple-page advertisements and to electronic advertisements. The Board proposed to add a new paragraph (3) to § 226.24(d) (comparable to proposed new paragraph (3) to § 226.16(c) for open-end credit advertising) to clarify that if a consumer accesses an advertisement for closed-end credit in electronic form, the disclosures required on or with the closed-end credit advertisement must be provided to the consumer in electronic form on or with the advertisement. The Board proposed to add comment 24(d)-5 to clarify this point, and also to make clear that if a consumer accesses a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement (and not, for example, by including a reference in the advertisement to the Web site where the disclosures are located). Commenters did not address this provision.

In the final regulation, new § 226.24(d)(3) and comment 24(d)-5 are not being adopted. Section 226.24(c) requires that if an advertisement includes trigger terms, the advertisement itself must "state" the required disclosures. Therefore, under the existing regulation, providing paper disclosures for an advertisement in electronic form, or vice versa, would not comply because the disclosures would not be stated in the advertisement itself.

Section 226.24(d) provides that in a catalog or other multiple-page advertisement, the required disclosures need not be shown on each page where a "trigger term" appears, as long as each such page includes a cross-reference to the page where the required disclosures appear. The 2001 interim final rule

clarified (in § 226.24(d)(1) and (2), and comments 24(d)-2 and 24(d)-4), as in the case of open-end credit advertising, that the multiple-page rule for closed-end credit advertising also applies to credit advertisements in electronic form. For example, if a “trigger term” appears on a particular web page, the additional disclosures may appear in a table or schedule on another web page and still be considered part of a single advertisement if there is a clear reference to the page or location where the table or schedule begins (which may be accomplished, for example, by including a link). In April 2007, the Board proposed to retain this provision. Only one commenter addressed this provision and expressed concern that consumers may not receive clear product information (see discussion under open-end advertising above). The final rule retains this provision as proposed.

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. In the 2001 interim final rule, comment 24(b)-6 was added to state that in an advertisement using electronic communication, the consumer must be able to view both rates simultaneously, and that this requirement is not satisfied if the consumer can view the APR only by use of a link that takes the consumer to another web location. In the April 2007 proposal, the Board proposed to delete comment 24(b)-6 as unnecessary, because the requirement to state the simple annual rate or periodic rate in conjunction with, and not more conspicuously than, the APR, applies to electronic advertisements no less than to advertisements in other media. In the supplementary information, the Board stated that requiring the consumer to scroll to another part of the page, or access a link, in order to view the APR would likely not satisfy this requirement.

Some commenters were concerned by the foregoing discussion in the April 2007 proposal, and contended that in the case of small hand-held electronic devices (such as Internet-enabled cellphones or personal digital assistants) that a consumer might use to view a credit advertisement, the small size of the screen might necessitate scrolling or the use of links for viewing the APR. Commenters also said the proposal was confusing in that comment 24(b)-6, stating that the use of links would not comply, was proposed to be deleted, yet the supplementary information appeared to impose the same restriction.

Comment 24(b)-6 is being deleted as proposed. As stated in the proposal, the existing regulatory requirement is to state the APR no less conspicuously than the simple rate of interest, and this rule applies in the electronic context. However, the Board believes that the rule can be applied with some degree of flexibility, to account for variations in devices consumers may use to view electronic advertisements. Therefore, the use of scrolling or links would not necessarily fail to comply with the regulation in all cases; however, creditors should ensure that electronic advertisements comply with the equal conspicuousness requirement.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31 General Rules

Subpart E implements the Home Ownership and Equity Protection Act (HOEPA) and sets forth special rules, including disclosure requirements, for certain mortgage loans with rates or fees above specified thresholds (HOEPA loans) and for reverse mortgage loans. Section 226.31(b) prescribes the form of disclosures required under Subpart E. Section 226.31(b)(1) requires creditors to provide the HOEPA and reverse mortgage disclosures in writing and in a form that the consumer may keep. As proposed, § 226.31(b)(1) is renumbered as § 226.31(b) and revised to clarify that the HOEPA and reverse mortgage disclosures may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some creditors may provide the HOEPA and reverse mortgage disclosures to consumers both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those creditors, the duplicate electronic form of the HOEPA and reverse mortgage disclosures may be provided to consumers without regard to the consumer consent and other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation’s HOEPA and reverse mortgage disclosure requirements.

Section 226.31(b)(2) in the interim final rule cross-references § 226.36, the section of the interim final rule setting forth general rules for electronic disclosures. Because the Board is deleting § 226.36, as discussed below, § 226.31(b)(2) is also being deleted in the final rule.

Subpart F—Electronic Communication

Section 226.36 Requirements for Electronic Communication

Section 226.36 was added by the 2001 interim final rule to address the general requirements for electronic communications. In the April 2007 proposal, the Board proposed to delete § 226.36 (which constitutes all of Subpart F) from Regulation Z and the accompanying sections of the staff commentary. Creditor commenters largely supported the proposed deletion, and § 226.36 and the accompanying commentary are deleted in the final rule.

In the interim rule, § 226.36(a) defined the term “electronic communication” to mean a message transmitted electronically that can be displayed on equipment as visual text, such as a message displayed on a personal computer monitor screen. The deletion of § 226.36(a) does not change applicable legal requirements under the E-Sign Act.

Sections 226.36(b), (c) and (f) incorporated by reference provisions of the E-Sign Act, such as the provision allowing disclosures to be provided in electronic form, the requirement to obtain the consumer’s affirmative consent before providing such disclosures, and the provision allowing electronic signatures. The deletion of these provisions has no impact on the general applicability of the E-Sign Act to Regulation Z disclosures.

Sections 226.36(d) and (e) addressed specific timing and delivery requirements for electronic disclosures under Regulation Z, such as the requirement to send disclosures to a consumer’s e-mail address (or post the disclosures on a Web site and send a notice alerting the consumer to the disclosures). The Board stated in the proposal that it no longer believed that these additional provisions were necessary or appropriate. The Board noted that electronic disclosures have evolved since 2001, as industry and consumers have gained experience with them, and also noted concerns about e-mail related to data security, identity theft, and phishing.

The consumer group commenters urged the Board to require the use of e-mail to provide required disclosures in electronic form, arguing that e-mail is the only reliable way to ensure that consumers are able to actually access, receive, and retain disclosures. The consumer groups also disagreed with the statement that concerns relating to phishing, identity theft, and data security are a valid reason for not requiring the use of e-mail, noting that

phishing involves gathering information from the consumer, while disclosures would be provided to the consumer, and need not include sensitive information.

While the consumer's receipt of an e-mail message that is actually from the consumer's creditor would not in general pose a security risk, consumers might ignore or delete e-mails from creditors (real or purported), in order to avoid falling victim to fraud schemes. Thus, disclosures sent by consumers' creditors may not receive the attention they should. Consequently, some creditors may be reluctant to communicate by e-mail. To the extent consumers are instructed not to ignore electronic mail messages from their creditors, the risk of consumers being victimized by fraudulent e-mail might be increased. In any event, the Board believes it is preferable not to mandate the use of any particular means of electronic delivery of disclosures, but instead to allow flexibility for creditors to use whatever method may be best suited to particular types of disclosure (for example, account-opening, periodic statements, or change in terms).

With regard to the requirement to attempt to redeliver returned electronic disclosures, creditors would be required to search their files for an additional e-mail address to use, and might be required to use a postal mail address for redelivery if no additional e-mail address was available. As stated in the April 2007 proposal, the Board continues to believe that both requirements would likely be unduly burdensome.

Under the April 2007 proposed rule, the requirement in the 2001 interim final rule for creditors to maintain disclosures posted on a Web site for at least 90 days would be deleted. Creditor commenters supported the proposed deletion; consumer group commenters expressed concern about its impact on consumers. As stated in the proposal, based on a review of industry practices, it appears that many creditors maintain disclosures posted on an Internet Web site for several months, and, in a number of cases, for more than a year. For example, it appears that credit card issuers that offer online periodic statements to consumers typically make those statements available without charge for six months or longer in electronic form. This practice has developed even though Regulation Z does not currently require creditors to maintain disclosures for any specific period of time. In addition, the Board continues to believe that an appropriate time period consumers may want electronic disclosures to be available may vary depending upon the type of

disclosure, and is reluctant to establish specific time periods that would vary depending on the disclosures, which would increase the compliance burden. Therefore, the 90-day retention provision is deleted as proposed.

Nevertheless, while the Board is not requiring disclosures to be maintained on an Internet Web site for any specific time period, the general requirements of Regulation Z continue to apply to electronic disclosures, such as the requirement to provide disclosures to consumers at certain specified times and in a form that the consumer may keep. The Board expects creditors to maintain disclosures on Web sites for a reasonable period of time (which may vary depending upon the particular disclosure) so that consumers have an opportunity to access, view, and retain the disclosures. As stated in the April 2007 proposal, the Board will monitor creditors' electronic disclosure practices with regard to the ability of consumers to retain Regulation Z disclosures and would consider further revisions to the regulation to address this issue if necessary.

V. Other Issues Raised by Commenters

Clear and Conspicuous Disclosures

An issue raised in the comments on the April 2007 proposal related to small hand-held electronic devices through which consumers may conduct financial transactions using the Internet or other electronic means (for example, personal digital assistants, Internet-enabled cellphones, and similar devices). One commenter requested clarification on whether creditors would be deemed to comply with the requirement to provide disclosures in a clear and conspicuous form, even when the consumer views them on a small screen of a hand-held electronic device. The commenter noted that the creditor has no control over what devices consumers choose to use, for example, to view disclosures on a web page. The Board believes that disclosures comply with the "clear and conspicuous" requirement as long as they are provided in a manner such that they would be clear and conspicuous when viewed on a typical home personal computer monitor. In addition, with regard to disclosures subject to specific font size requirements, the disclosures must be provided such that the required size requirement would be met when viewed on a typical home personal computer monitor.

Retainable Form

Several industry commenters requested guidance on how creditors can be sure of meeting the requirement

to provide disclosures in a form that the consumer can keep. Commenters noted that some of the disclosures that are exempted from the E-Sign requirements regarding notice and consent are nevertheless required to be given in retainable form (for example, the HELOC brochure under § 226.5b(e) and the ARM application disclosures under § 226.19(b)). Commenters pointed out that the E-Sign Act requires, with regard to consumer disclosures generally, that a creditor disclose "the hardware and software requirements for access to and retention of the electronic records" and that the consumer consent to electronic disclosures "in a manner that reasonably demonstrates that the consumer can access" the disclosures electronically. A commenter noted that if the E-Sign procedures are followed, a creditor has some degree of comfort that the retainability requirement has been met; however, with regard to disclosures that are exempted from the E-Sign notice and consent provisions (such as those under §§ 226.5b(e) and 226.19(b)), it is not clear how the creditor can demonstrate compliance with the retainability requirement.

The consumer group commenters were concerned about retainability of disclosures in light of the deletion of the requirement to maintain disclosures on a Web site for at least 90 days. They urged that the final regulations require that disclosures be delivered in a format that is both downloadable and printable.

The Board believes that creditors satisfy the requirement for providing electronic disclosures in a form the consumer can retain if they are provided in a standard electronic format that can be downloaded and saved or printed on a typical home personal computer. Typically, any document that can be downloaded by the consumer can also be printed. The Board will, however, monitor creditors' practices to evaluate whether further guidance is needed on this issue. In a situation where the consumer is provided electronic disclosures through equipment under the creditor's control—such as a terminal or kiosk in the creditor's offices—the creditor could, for example, provide a printer that automatically prints the disclosures.

Delayed Disclosures

A number of creditor commenters suggested that, in the case of transactions involving small hand-held electronic devices, creditors should be permitted to treat the transactions as though they were conducted by telephone and thus delay disclosures. For example, for telephone credit card applications and solicitations, § 226.5a

permits the disclosures to be provided within 30 days after the consumer requests the credit card (but no later than the delivery of the card). For telephone HELOC applications and ARM loan applications, §§ 226.5b and 226.19(b), respectively, permit the disclosures to be provided within three business days after the creditor receives the application. For telephone applications for closed-end credit in general, § 226.17(g) allows the § 226.18 loan (or retail sale) disclosures to be provided no later than the due date of the first payment, if certain generic disclosures have been made available to the consumer or to the public generally (for example, in a catalog). Since small hand-held electronic devices may not be well suited to displaying or retaining disclosures, commenters argued that creditors should be permitted to mail paper disclosures to consumers within the timeframes specified in the regulations applicable to telephone transactions, instead of providing electronic disclosures that consumers might view using a small hand-held device. Commenters contended that such devices are more like telephones than home computers. Some commenters suggested that such a delayed disclosure provision should apply to other situations as well, such as “enhanced ATMs” and computers not owned by the consumer (e.g., a computer in an employer’s office or a public library). However, it does not appear that at present, use of such devices for financial transactions has advanced to the point where the relief suggested by the commenters is necessary to avoid burdens on electronic commerce.

Expansion of Exception From E-Sign Notice and Consent Requirements

One commenter suggested that the Board adopt additional exemptions from the E-Sign notice and consent requirements. For example, if a consumer applied for a credit card or mortgage online, the commenter suggested that the creditor should be able to provide the account-opening disclosures under § 226.6, or loan closing disclosures under § 226.18 (in addition to the application-related disclosures already permitted under this final rule) online, without notice and consent under the E-Sign Act. The commenter argued that, since Internet commerce has expanded greatly over the past few years, when consumers choose to conduct financial transactions online, they presume that they will receive related disclosures online as well. The Board believes that, at this time, there is insufficient evidence that

the consent requirements are a burden on electronic commerce in this situation; and that consumers who shop for credit online may not necessarily want to receive account-opening or loan closing disclosures online.

VI. 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. In the proposed rule, the Board invited comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand. A few commenters made suggestions for clarifying the regulatory language. These comments are discussed above, under “IV. Section-by-Section Analysis.” The Board has attempted to clarify the language in the final rule as suggested by commenters.

VII. Final Regulatory Flexibility Analysis

The Board prepared an initial regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) in connection with the April 2007 proposal. The Board received no comments on its initial regulatory flexibility analysis.

The RFA generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities. However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* The Board is adopting revisions to Regulation Z to withdraw the 2001 interim final rule on electronic communication and to allow creditors to provide certain disclosures to consumers in electronic form on or with an application, solicitation, or advertisement that is accessed by the consumer in electronic form without regard to the consumer consent and other provisions of the E-Sign Act. The Board is also clarifying that other Regulation Z disclosures may be provided to consumers in electronic form in accordance with the consumer

consent and other applicable provisions of the E-Sign Act.

TILA was enacted to enhance economic stabilization and competition for credit by strengthening the informed use of credit, including an awareness of the cost of credit by consumers. The purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer can compare the various credit terms available and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices. 15 U.S.C. 1601. TILA authorizes the Board to prescribe regulations to carry out the purposes of the statute. 15 U.S.C. 1604(a). The Act expressly states that the Board’s regulations may contain “such classifications, differentiations, or other provisions, * * *, as in the judgment of the Board are necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion of [the Act], or to facilitate compliance with [the Act].” 15 U.S.C. 1604(a). The Board believes that the revisions to Regulation Z discussed above are within Congress’s broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute. These revisions facilitate the informed use of credit by consumers in circumstances where a consumer accesses a credit application, solicitation, or advertisement in electronic form.

2. *Issues raised by comments in response to the initial regulatory flexibility analysis.* In accordance with section 603(a) of the RFA, the Board conducted an initial regulatory flexibility analysis in connection with the proposed rule. The Board did not receive any comments on its initial regulatory flexibility analysis.

3. *Small entities affected by the final rule.* The ability to provide shopping and advertising disclosures in electronic form on or with an application, solicitation, or advertisement that is accessed by the consumer in electronic form applies to all creditors, regardless of their size. Accordingly, the final rule would reduce burden and compliance costs for small entities by providing relief, to the extent the E-Sign Act applies in these circumstances. The number of small entities affected by this final rule is unknown.

4. *Other federal rules.* The Board believes no federal rules duplicate, overlap, or conflict with the final revisions to Regulation Z.

5. *Significant alternatives to the proposed revisions.* The Board solicited comment on any significant alternatives that could provide additional ways to reduce regulatory burden associated

with the proposed rule. Commenters suggested that in certain circumstances where a consumer accesses a credit application or solicitation in electronic form, creditors should be permitted to provide the required disclosures in paper form (rather than electronic form as would be required under the proposed rule). The final rule permits paper disclosures in certain circumstances as suggested by the commenters. A commenter also suggested that in certain cases where a consumer receives a credit application or solicitation in paper form, creditors should be permitted to provide the required disclosures in electronic form without the consumer's consent. The final rule allows electronic disclosures in the case of applications or solicitations in paper form, but only if the consumer consents in accordance with the E-Sign Act.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (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 (OMB). The collection of information that is subject to the PRA by this final rulemaking is found in 12 CFR 226. 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.

Title I of the Consumer Credit Protection Act authorizes the Federal Reserve to issue regulations to carry out the provisions of that Act. 15 U.S.C. 1601, 1604(a). This information collection is mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, in the event the Board were to retain records during the course of an examination, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)). Transaction- or account-specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and the consumer. General disclosures of credit terms that appear in advertisements or take-one applications are available to the public.

TILA and Regulation Z ensure adequate disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to disclose information about the initial costs and terms and to provide periodic

statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. The regulation also requires specific types of disclosures for credit and charge card accounts and home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required of certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation. Creditors are required to retain evidence of compliance for twenty-four months (subpart D, section 226.25), but the regulation does not specify the types of records that must be retained.

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-supervised institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden on other creditors. The annual burden is estimated to be 552,398 hours for the 1,172 Federal Reserve-supervised institutions that are deemed to be respondents for the purposes of the PRA.

As mentioned in the Preamble, on April 30, 2007, a notice of proposed rulemaking was published in the **Federal Register** (72 FR 21141). No comments specifically addressing the burden estimate were received.

The Federal Reserve has a continuing interest in the public's opinions of our 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.

List of Subjects in 12 CFR Part 226

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

■ For the reasons set forth in the preamble, the Board amends 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 revising paragraph (a)(1), to read as follows, and removing paragraph (a)(5):

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing,⁷ in a form that the consumer may keep.⁸ The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*). The disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

* * * * *

■ 3. Section 226.5a is amended by adding a new paragraph (a)(2)(v), to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) * * *

(2) * * *

(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application or solicitation.

* * * * *

⁷ The disclosure required by section 226.9(d) when a finance charge is imposed at the time of a transaction need not be written.

⁸ The disclosures required under § 226.5a for credit and charge card applications and solicitations, the home equity disclosures required

■ 4. Section 226.5b is amended by adding a new paragraph (a)(3), to read as follows, removing the heading for paragraph (c)(1), redesignating paragraph (c)(1) as paragraph (c), and removing paragraph (c)(2):

§ 226.5b Requirements for home equity plans.

* * * * *

(a) * * * (3) For an application that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application.

* * * * *

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

§ 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 in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). * * *

* * * * *

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

§ 226.16 Advertising.

* * * * *

(c) Catalogs or other multiple-page advertisements; electronic advertisements. (1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), 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 § 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 electronic advertisement (such as an advertisement appearing on an Internet Web site) 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 revising paragraph (a)(1), removing paragraph (a)(3), and revising paragraph (g), to read as follows:

§ 226.17 General disclosure requirements.

(a) Form of disclosures. (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). The disclosures required by §§ 226.17(g), 226.19(b), and 226.24 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related³⁷ to the disclosures required under § 226.18.³⁸ The itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under that section.

* * * * *

(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 or in electronic form to the consumer or to the public before the actual purchase order or request:

- (1) The cash price or the principal loan amount.
(2) The total sale price.
(3) The finance charge.

³⁷ The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.

³⁸ The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 226.18(a), the variable rate example under § 226.18(f)(1)(iv), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

(4) The annual percentage rate, and if the rate may increase after consummation, the following disclosures:

- (i) The circumstances under which the rate may increase.
(ii) Any limitations on the increase.
(iii) The effect of an increase.
(5) The terms of repayment.

* * * * *

■ 8. Section 226.19 is amended by adding a new paragraph (c), to read as follows:

§ 226.19 Certain residential mortgage and variable-rate transactions.

* * * * *

(c) Electronic disclosures. For an application that is accessed by the consumer in electronic form, the disclosures required by paragraph (b) of this section may be provided to the consumer in electronic form on or with the application.

■ 9. Section 226.23 is amended by revising the first sentence of paragraph (b)(1), to read as follows:

§ 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 in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). * * *

* * * * *

■ 10. Section 226.24 is amended by revising paragraph (d) to read as follows:

§ 226.24 Advertising.

* * * * *

(d) Catalogs or other multiple-page advertisements; electronic advertisements. (1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), 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 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 electronic

advertisement (such as an advertisement appearing on an Internet Web site) 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 E—Special Rules for Certain Home Mortgage Transactions

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

§ 226.31 General rules.

* * * * *

(b) *Form of disclosures.* The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*).

* * * * *

Subpart F—[Removed]

■ 12. Subpart F, consisting of § 226.36, is removed.

■ 13. 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*, paragraph 8. is revised and new paragraph 9. is added.

■ c. In *Section 226.5b—Requirements for Home Equity Plans*, under *5b(a) Form of Disclosures*, under *5b(a)(1) General*, new paragraph 5. is added.

■ d. In *Section 226.5b—Requirements for Home Equity Plans*, under *5b(a) Form of Disclosures*, new heading *Paragraph 5b(a)(3)* is added, and under the new heading new paragraph 1. is added.

■ e. In *Section 226.5b—Requirements for Home Equity Plans*, under *5b(b) Time of Disclosures*, paragraph 7. is removed.

■ f. In *Section 226.15—Right of Rescission*, under *15(b) Notice of Right to Rescind.*, paragraph 1. is revised.

■ g. In *Section 226.16—Advertising*, under *Paragraph 16(c)(1)*, paragraphs 1. and 2. are revised.

■ h. In *Section 226.19—Certain Residential Mortgage and Variable-Rate*

Transactions, under *19(b) Certain variable-rate transactions*, paragraph 2.v. is revised.

■ i. In *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, new heading *19(c) Electronic disclosures* is added, and under the new heading new paragraph 1. is added.

■ j. In *Section 226.23—Right of Rescission*, under *23(b) Notice of Right to Rescind.*, paragraph 1. is revised.

■ k. In *Section 226.24—Advertising*, under *24(b) Advertisement of Rate of Finance Charge*, paragraph 6. is removed.

■ l. In *Section 226.24—Advertising*, under *24(d) Catalogs or other multiple-page advertisements; electronic advertisements*, paragraphs 2. and 4. are revised.

■ m. Subpart F, section 226.36—Requirements for Electronic Communications, is removed.

The amendments read as follows:

SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

* * * * *

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

* * * * *

5(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.

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General rules.

5a(a)(2) Form of disclosures.

* * * * *

8. *Form of electronic disclosures provided on or with electronic applications or solicitations.* Card issuers must provide the disclosures required by this section on or with a blank application or reply form that is made available to the consumer in electronic form, such as on a card issuer's Internet Web site. Card issuers have flexibility in satisfying this requirement. Methods card issuers could use to satisfy the requirement include, but are not limited to, the following examples:

i. The disclosures could automatically appear on the screen when the application or reply form appears;

ii. The disclosures could be located on the same Web page as the application or reply

form (whether or not they appear on the initial screen), if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

iii. Card issuers could provide a link to the 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. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

iv. The disclosures could be located on the same web page as the application or reply form without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application or reply.

Whatever method is used, a card issuer need not confirm that the consumer has read the disclosures. For disclosures required to be provided in tabular form, card issuers must satisfy the requirements with respect to electronic disclosures set forth in comment 5a(a)(2)–2(ii).

9. *Form of disclosures.* Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a credit card application or solicitation electronically other than in-person in a card issuer's office (covered under ii. below), such as online at a home computer, the card issuer must provide the disclosures in electronic form (such as with the application or solicitation on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application or solicitation. If the issuer instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the card issuer's office, and accesses a credit card application or solicitation electronically, such as via a terminal or kiosk, the issuer may provide disclosures in either electronic or paper form, provided the issuer complies with the timing and delivery ("on or with") requirements of the regulation.

* * * * *

Section 226.5b—Requirements for Home Equity Plans

* * * * *

5b(a) Form of disclosures.

5b(a)(1) General

* * * * *

5. *Form of electronic disclosures provided on or with electronic applications.* Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples:

i. The disclosures could automatically appear on the screen when the application appears;

ii. The disclosures could be located on the same web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

iii. Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

iv. The disclosures could be located on the same web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

Whatever method is used, a creditor need not confirm that the consumer has read the disclosures.

* * * * *

Paragraph 5b(a)(3)

1. Form of disclosures. Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a home equity credit line application electronically other than in-person in a creditor's office (covered under ii. below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the creditor's office, and accesses a home equity credit line application electronically, such as via a terminal or kiosk, the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

* * * * *

Section 226.15—Right of Rescission

* * * * *

15(b) Notice of right to rescind.

1. Who receives notice. Each consumer entitled to rescind must be given:

- Two copies of the rescission notice.
• The material disclosures.

In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice (one copy to each if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act) and one copy of the disclosures.

* * * * *

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 (such as an advertisement appearing on an Internet Web site). The rule applies only if the advertisement contains one or more of the triggering terms from § 226.16(b).

2. Electronic advertisement. If an electronic advertisement (such as an advertisement appearing on an Internet Web site) contains the table or schedule permitted under § 226.16(c)(1), any statement of terms set forth in § 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

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain variable-rate transactions.

* * * * *

2. * * *

v. Form of electronic disclosures provided on or with electronic applications. Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples:

A. The disclosures could automatically appear on the screen when the application appears;

B. The disclosures could be located on the same web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

C. Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

D. The disclosures could be located on the same web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

Whatever method is used, a creditor need not confirm that the consumer has read the disclosures.

* * * * *

19(c) Electronic disclosures.

1. Form of disclosures. Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses an ARM loan application electronically other than in-person in a creditor's office (covered under ii. below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the creditor's office, and accesses an ARM loan application electronically, such as via a terminal or kiosk, the creditor may provide disclosures in either electronic or paper form, provided the issuer complies with the timing, delivery, and retainability requirements of the regulation.

* * * * *

Section 226.23—Right of Rescission

* * * * *

23(b) Notice of right to rescind.

1. Who receives notice. Each consumer entitled to rescind must be given:

- Two copies of the rescission notice.
• The material disclosures.

In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice (one copy to each if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act) and one copy of the disclosures.

* * * * *

Section 226.24—Advertising

* * * * *

24(d) Catalogs or other multiple-page advertisements; electronic advertisements.

* * * * *

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 (such as an advertisement appearing on an Internet Web site). The rule applies only if the advertisement contains one or more of the triggering terms from § 226.24(c)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under § 226.24(c)(2) and so is not covered by § 226.24(d).

* * * * *

4. Electronic advertisement. If an electronic advertisement (such as an advertisement appearing on an Internet Web site) contains the table or schedule permitted under § 226.24(d)(1), any statement of terms set forth in § 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.

By order of the Board of Governors of the Federal Reserve System, October 31, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7-21700 Filed 11-8-07; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R-1285]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is amending Regulation DD, which implements the Truth in Savings Act, and the official staff commentary to the regulation, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules addressed the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Because compliance with the 2001 interim final rules has not been mandatory, withdrawal of these provisions from the *Code of Federal Regulations* reduces confusion about the status of the provisions and simplifies the regulation.

In addition, the Board is adopting final amendments to Regulation DD to provide guidance on the electronic delivery of disclosures. For example, the final rules provide that when a deposit account advertisement is accessed by a consumer in electronic form, disclosures may be provided to the consumer in electronic form in the advertisement without regard to the consumer consent and other provisions of the E-Sign Act. Similar final rules are being adopted under other consumer fair lending and financial services regulations administered by the Board.

DATES: The final rule is effective December 10, 2007. The mandatory compliance date is October 1, 2008.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The purpose of the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is to

enable consumers to make informed decisions about accounts at depository institutions. The act requires depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, when changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. The Board's Regulation DD (12 CFR part 230) implements the act. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration. TISA and Regulation DD require a number of disclosures to be provided in writing.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq.*, was enacted in 2000. The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

The E-Sign Act, including the special consumer notice and consent provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, depository institutions are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing under Regulation DD if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

II. Board Proposals and Interim Rules Regarding Electronic Disclosures

On April 4, 2001, the Board published for comment interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation DD (66 FR 17,795). Similar interim final rules for Regulations B, E, M, and Z, (implementing the Equal Credit Opportunity Act, the Electronic Fund Transfer Act, the Consumer Leasing Act, and the Truth in Lending Act, respectively) were published on March 30, 2001 (66 FR 17,322 and 66 FR 17,329) (Regulations M and Z, respectively) and April 4, 2001 (66 FR

17,779 and 66 FR 17,786) (Regulations B and E, respectively). Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Depository institutions, creditors, and other persons, as applicable, generally were required to obtain consumers' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act. The interim final rules also incorporated many of the provisions that were part of earlier regulatory proposals issued by the Board regarding electronic disclosures.¹

Under the 2001 interim final rules, disclosures could be sent to an e-mail address designated by the consumer, or could be made available at another location, such as an Internet Web site. If the disclosures were not sent by e-mail, institutions would have to provide a notice to consumers (typically by e-mail) alerting them to the availability of the disclosures. Disclosures posted on a Web site would have to be available for at least 90 days to allow consumers adequate time to access and retain the information. Institutions also would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files.

Commenters on the interim final rules identified significant operational and information security concerns with respect to the requirement to send the disclosure or an alert notice to an e-mail address designated by the consumer. For example, commenters stated that some consumers who choose to receive electronic disclosures do not have e-mail addresses or may not want personal financial information sent to them by e-mail. Commenters also noted that e-mail is not a secure medium for delivering confidential information and that consumers' e-mail addresses frequently change. The commenters also opposed the requirement for redelivery in the event a disclosure was returned undelivered. In addition, many commenters asserted that making the disclosures available for at least 90 days, as required by the interim final rule,

¹ On May 2, 1996, the Board proposed to amend Regulation E to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14,528, March 25, 1998) and similar proposals under Regulations B, M, Z, and DD (63 FR 14,552, 14,538, 14,548, and 14,533, respectively, March 25, 1998). Based on comments received on the 1998 proposals, in 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999).