FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-1006]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending Regulation B, which implements the Equal Credit Opportunity Act. The proposal would permit creditors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation if the consumer agrees to such delivery.

DATES: Comments must be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R-1006, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel or Natalie E. Taylor, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 et seq.) makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The act is implemented by the Board's Regulation B (12 CFR part 202).

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication for delivery of information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example, in May 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) that allowed financial institutions to send notices electronically. (62 FR 13801, March 18, 1997.)

Having considered comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation B to allow creditors to provide Regulation B disclosures electronically; such disclosures would remain subject to any applicable timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed revisions to address electronic communication under Regulations DD (Truth in Savings), Z (Truth in Lending), and M (Consumer Leasing), published elsewhere in today's Federal Register. In addition, the Board has issued an interim rule under Regulation E so that financial institutions can implement systems to provide Electronic Fund Transfer Act disclosures electronically.

II. Proposed Regulatory Revisions

The ECOA and Regulation B require certain disclosures to be provided to applicants in writing. Under Regulation B, the regulatory requirement that disclosures be in writing has been presumed to require that creditors provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing at least where visual text is involved.

Therefore, pursuant to its authority under section 703(a)(1) of the ECOA, the Board

proposes to amend Regulation B to permit creditors to use electronic communication where the regulation calls for information to be provided in writing. The term "electronic communication" is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of “electronic communication" for purposes of this regulation because they do not have the feature generally associated with a writing -- visual text.

Section 202.5 Rules Concerning Taking of Applications

A new subsection (f) would be added to § 202.5 to address electronic communication. "Electronic communication" is a visual text message electronically transmitted between a creditor and an applicant's home computer or other electronic device used by an applicant. (Under the ECOA and Regulation B, the term “applicant” includes any person who requests or who has received and extension of credit from a creditor, and any person who is or may become contractually liable regarding an extension of credit. In this notice, the term is used in this context.)

Agreements Between Financial Institutions and Consumers

Section 202.5(f) would permit creditors to send electronic disclosures if the consumer agrees. There may be various ways that a creditor and an applicant agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be determined by applicable state law. The regulation would not preclude a creditor and an applicant from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of ECOA and Regulation B disclosures and other information electronically.

Delivery Requirements for Electronic Communication

Regulation B requires that a creditor "provide," "give," "deliver," or "mail" information to an applicant, or "notify" an applicant of certain information. Generally, the delivery requirement anticipates that a creditor will deliver the information -- typically by mail -- to an address designated by the applicant. For a paper communication, a creditor would not satisfy that requirement by making disclosures "available" to applicants, for example, at a creditor's office or other location. The Board believes that consumers receiving disclosures by electronic communication should have protections regarding delivery similar to those afforded consumers receiving disclosures in paper form. Simply posting information to an Internet site, however, without some appropriate notice and instructions about how the applicant may obtain the required information would not satisfy the requirement.

As a practical matter, there may be little distinction between sending or delivering

electronic disclosures and making them “available.” Creditors would have flexibility in how they may deliver electronic disclosures to applicants, including, but not limited to the following examples. They may send disclosures to a consumer-designated electronic mail address or they may designate a location on a website where the applicant enters a personal identification number or other identifier to access required information. Assume that an applicant applies for a credit plan and agrees to receive all ECOA and Regulation B disclosures electronically. Subsequent disclosures, such as adverse action notices, sent (or delivered) to the designated address or placed at a designated location would generally satisfy the delivery requirements of the regulation.

Electronic communication would remain subject to any timing or other applicable requirements under Regulation B. For example, notice of action required by § 202.9(a)(1) of Regulation B must still be provided within thirty days after receiving a completed application. The Board solicits comment on whether further guidance is needed on how to comply wth the timing requirements when a notice is posted on an Internet website.

Requirement That Information be "Clear and Conspicuous"

Currently, Regulation B does not expressly require creditors to present required information in a clear and conspicuous format. On the other hand, Regulations CC (Availability of Funds), DD (Truth in Savings), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) all require that information be provided in a clear and conspicuous (or readily understandable) format. Accordingly, the Board believes it may be desirable to apply this same standard to information provided by electronic communication under Regulation B to ensure that information is understandable. The Board requests comment on whether Regulation B should be amended to apply this requirement to disclosures provided electronically.

Applicant's Ability to Retain Disclosures

Currently, only the notice in § 202.9(a)(3)(i)(B) of Regulation B need be provided in a form the applicant may retain. As in the case of the clear and conspicuous requirement discussed above, Regulations CC (Availability of Funds), DD (Truth in Savings), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) all require that information be provided in a form that the consumer may keep. Because the retention requirement for written disclosures (including electronic communication) exists for those regulations, it seems appropriate to apply a comparable standard to Regulation B. The Board requests comment on whether this retention requirement should be extended to electronic communication under Regulation B.

Creditors would satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the applicant. Thus, creditors would not be required to monitor an individual applicant's ability to retain the information, nor to take steps to find out whether the applicant has in fact retained it. The Board anticipates that, where appropriate, a creditor would inform the applicant of special technical specifications for receiving or retaining information before or at the time an applicant agrees to receive information electronically.

However, in circumstances where the creditor (or a network in which the creditor is a member) controls the equipment to be used for the service -- such as terminals in institution lobbies or kiosks in public or other places -- the creditor would have the responsibility of ensuring retainability. Provided that the delivery requirements (discussed above) are satisfied, methods for fulfilling this requirement could include, for example, printers incorporated into terminals or a screen message offering to transmit the disclosure to the applicant's electronic mail or post office address.

Consumer Requests for Information

Under Regulation B, applicants are entitled to receive certain information upon written request. For example, § 202.5a requires a creditor to provide -- either automatically or upon the applicant's written request -- a copy of the appraisal report used in connection with an application for a loan secured by a lien on a dwelling. Where the creditor provides appraisal reports only upon request, the creditor must notify the applicant of the right to request an appraisal and whether the applicant's request must be in writing. Section 202.9(a)(3)(ii) allows a creditor to disclose orally a business applicant's right to a statement of specific reasons for adverse action; however, the creditor must provide the reasons in writing within a specified time period after receiving the applicant's written request for the reasons. The proposed rule would permit all consumer requests required to be in writing to be sent electronically.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive federal disclosures in paper form. As electronic commerce and electronic banking increase and technological advances take place, obtaining disclosures by electronic communication will likely become more commonplace. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. Thus, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that creditors subject to Regulation B will provide sufficient details about the delivery of disclosures. The Board plans to closely monitor the development of electronic delivery of disclosures and other information, and will address compliance or other issues that may arise as appropriate.

III. Form of Comment Letters

Comment letters should refer to Docket No. R-1006 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 ½ inch or 5 1/4 inch computer diskettes in any IBM-compatible DOS-based format.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's Office of the Secretary has reviewed the proposed amendments to Regulation B. Overall, the proposed amendments are not expected to have any significant impact on small entities. The proposed rule would relieve compliance burden by giving creditors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

V. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed revisions under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the burden the proposed revised requirements would impose on state member banks. Creditors would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to print and mail the information in paper form. The use of electronic communication in home banking and financial services may reduce the paperwork burden on creditors and financial institutions or merely may reduce the dollar cost.

The Federal Reserve requests comments from creditors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this rule is effective. Comments are invited on: (a) whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0201), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR Parts 202.5, 202.9, 202.12, 202.13, and Appendices B and C. This information is mandatory (15 U.S.C. 1691b(a)(1) and Public Law 104-208, § 2302(a)) to ensure to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any

right under the Consumer Credit Protection Act (15 U.S.C. 1600 et. seq.). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Creditors are required to retain records for twelve to twenty-five months as evidence of compliance.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation B (OMB No. 7100-0201) for three years. The current estimated total annual burden for this information collection is 125,177 hours, as shown in the table below. These amounts reflect the burden estimate of the Federal Reserve System for the 996 state member banks under its supervision. This regulation applies to all types of creditors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

	number of respondents	*estimated annual frequency*	*estimated response time*	*estimated annual burden hours*
Notification	996	1,715	2.50 minutes	71,173
Credit history reporting	996	850	2.00 minutes	28,220
Monitoring	996	360	.50 minute	2,988
Appraisal				
Appraisal report upon request	996	190	5.00 minutes	15,770
Notice of right to appraisal	996	1,650	.25 minute	6,848
Self-testing				
Recordkeeping of test	45	1	2 hours	90
Recordkeeping of corrective action	11	1	8 hours	88
Total				125,177

Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, 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)). The adverse action disclosure is confidential between the institution and the consumer involved.

An agency may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB

control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation B is 7100-0201.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation B. New language is shown inside bold-faced arrows.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 202 as set forth below:

PART 202 -- EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691-1691f.

2. Section 202.5 would be amended by adding a new paragraph (f) to read as follows:

§ 202.5 Rules concerning taking of applications.

* * * * *

<(f) Electronic communication means a message transmitted electronically between an applicant and a creditor in a format that allows visual text to be displayed on equipment such as a personal computer monitor. A creditor and an applicant may agree to send by electronic communication any information required by §§ 202.5a, 202.9, or 202.13(b), in accordance with applicable timing requirements. Disclosures provided by electronic communication shall be clear and conspicuous and in a form that the applicant may keep.=

By order of the Board of Governors of the Federal Reserve System, March 12, 1998.

(Signed)
William W. Wiles,
Secretary of the Board.