FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1043]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation Z, which implements the Truth in Lending Act. The Board previously published a proposed rule that permits 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. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the proposals, the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues. The Board is also publishing for comment proposed revisions to allow disclosures in other languages.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R-1043, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR §§ 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: For information pertaining to open-end credit, John C. Wood, Senior Attorney, or Jane E. Ahrens, Senior Counsel; for information pertaining to closed-end credit, Michael L. Hentrel or Kyung H. Cho-Miller, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412. Users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 et seq., is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwellings.

TILA and Regulation Z require a number of disclosures to be provided in writing, presuming that creditors provide paper documents. Under 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, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communications for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the “interim rule”), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552, (collectively, the "March 1998 proposed rules"). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference this background section uses the terms “financial institutions,” “institutions,” and “consumers.”) The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the TILA and Regulation Z. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communication before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the disclosures originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and the March 1998 proposed rules. It is intended to provide specific guidance for creditors that choose to use electronic communication to comply with Regulation Z's requirements to provide written disclosures, and to ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with the electronic communication rules. The modified proposal recognizes that some disclosures may warrant different treatment under the rule. Some disclosures are generally available to the public--for example, credit card costs in solicitations. Under the modified proposal, such disclosures could be made available electronically without obtaining a consumer's consent. Where written disclosures are made to consumers who are transacting business in person, these disclosures generally would have to be made in paper form.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, creditors would have to provide specific information about how the consumer can receive and retain electronic disclosures--through a standardized disclosure statement--before obtaining consumers' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, creditors would be permitted to use electronic communications. As a general rule a creditor would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the creditor by electronic communication or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer becomes obligated for an extension of credit in person, disclosures must be given in paper form.

Creditors would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the creditor's website, for printing or downloading. If the disclosures are posted at a website location, creditors generally must notify consumers at an e-mail address about the availability of the information. (Creditors may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the "clear and conspicuous" standard, and the existing format, timing, and retainability rules in Regulation Z. For example, to satisfy the timing requirement, if disclosures are due at the time an electronic transaction is being conducted, the disclosures have to appear on the screen before the consumer could complete the transaction.

Creditors generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A creditor would not otherwise have a duty to verify consumers' actual ability to receive, print, or download the disclosures. Some commenters suggested that creditors should be required to verify delivery by return receipt. The Board solicits comment on the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated.

Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for electronic communications should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require creditors to retain evidence of compliance with Regulation Z. Specific comment is solicited on the feasibility of complying with a requirement that creditors provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

Elsewhere in today's Federal Register, the Board is publishing similar proposals for comment under Regulations B, E, M, and DD. In a separate notice the Board is publishing an interim rule under Regulation DD, which implements the Truth in Savings Act, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 105 of the TILA, the Board proposes to amend Regulation Z to permit creditors to use electronic communication to provide the information required by this regulation to be in writing. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

The March 1998 proposed rule addressed electronic communication in Subpart B (open-end credit plans), Subpart C (closed-end transactions), and Subpart E (certain mortgage transactions). To ease compliance, the Board proposes to add a new Subpart F and Appendix M to the regulation to address in a single location all rules affecting electronic communication for consumer credit transactions. The revised proposal also amends § 226.27 to allow creditors to provide disclosures in another language so long as English disclosures are provided upon request.

Subpart B--Open-end Credit

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

Regulation Z requires credit and charge card issuers to provide credit disclosures in certain applications and solicitations to open credit and charge card accounts. Format and content requirements differ for applications or solicitations sent in direct mail campaigns and for those made available to the general public such as in “take-ones” and catalogs or magazines. Disclosures accompanying direct mail applications and solicitations must be presented in a table. Disclosures in a take-one also may be presented in a table with the same content as for direct mail, but the act and regulation permit alternatives for format and content. Where terms are disclosed, card issuers are required to disclose the periodic rate that would apply, expressed as an APR. For fixed rates, card issuers are required to disclose the APR currently available under the plan. For variable rates, the APR disclosed in a direct mail solicitation must be accurate within 60 days before mailing; in a take-one, within 30 days before printing.

The supplementary information to the March 1998 proposed rule addressed compliance with § 226.5a in the context of electronic communication. The Board indicated that card issuers should follow (1) the direct-mail rules if a card issuer sends an application or solicitation by electronic communication that alerts the consumer that the application or solicitation has arrived, such as electronic mail, and (2) the take-one rules if an issuer makes an application or solicitation publicly available, such as by posting it on an Internet site. Thus, for applications and solicitations posted on the Internet, the 1998 proposal would require that APRs generally be accurate within

30 days before the card issuer's most recent update of the Internet site; where direct mail rules apply, the APR would be accurate within 60 days before the card issuer's electronic mailing.

Most commenters concurred with the Board's guidance on when the direct mail requirements would apply to electronic disclosures, although a few commenters suggested that the Board simplify the proposal by establishing one rule for all solicitations by electronic communication. Regarding the APR, several commenters asked the Board what would constitute the "most recent" update of an Internet site. For example, commenters questioned whether the term referred to an update of any aspect of a creditor's website, or was limited to an update of the application or solicitation. Many commenters (including state and federal regulators) urged the Board to provide guidance by recommending a frequency for updating Internet sites. Other commenters stated that updates to information provided on the Internet, including the APR, should be required frequently, and within a set period of time.

To simplify the rule and to address commenters' concerns, the Board is proposing a single standard that would apply to the accuracy of APRs contained in applications or solicitations offered via electronic communication. Proposed would § 226.5a(b)(1)(iii) provides that when a variable rate is in an application or solicitation transmitted via electronic communication, the rate should be one that was in effect within the previous 30-day period. The 30-day period should allow card issuers sufficient flexibility in updating websites or in preparing electronic direct mail applications or solicitations without adversely affecting the consumer. The Board continues to believe that as to the format and content of the disclosures, applications or solicitations sent to a consumer's designated e-mail address should comply with the direct mail rules under § 226.5a(c) and that applications and solicitations available on a website should comply with the take-one rules under § 226.5a(e). Proposed comment 5a(a)(2)-7(i) contains this guidance. The Board requests comment on any compliance difficulties this approach may pose, and possible suggestions for their resolution.

Section 226.5b Requirements for Home-Equity Plans

5b(b) Time of disclosures

Consumers interested in an open-end plan secured by the consumer's dwelling are provided with a booklet and other disclosures generically describing the creditor's product when an application is provided. Creditors may delay the delivery of the booklet and disclosures for up to three business days when, among other circumstances, applications are received by telephone. 12 CFR 226.5b(b), n. 10a.

Creditors have requested guidance on using electronic communication to provide the disclosures required by § 226.5b(b) when the consumer is transacting business at a creditor's website. Some believe the timing rules for applications by telephone should apply. The rationale underlying the deferral is that creditors cannot provide the booklet and other disclosures in written form as required by the regulation by telephone. That problem does not exist with on-line transactions. Thus, the Board believes there is no need for a delay in delivering disclosures. If the creditor's procedures permit the consumer to apply for credit on-line (and the creditor has complied with § 226.34(c)), the booklet and loan-product disclosures required by § 226.5b would have to appear on the screen before the consumer starts the application process. This fulfills the rule's purpose to ensure that consumers have the opportunity to read important information about costs and other terms before the consumer completes an application or pays a nonrefundable fee. Proposed comment 5b(b)-7 contains this guidance. See also the discussion under § 226.19(b), below, for similar guidance regarding disclosures provided at application for certain mortgage loans.

Section 226.16 Advertising

16(c) Catalogs and Multiple-page Advertisements

Stating certain credit terms in an advertisement for an open-end credit plan triggers the disclosure of additional terms. Section 226.16(c) permits creditors using a multiple-page advertisement to state the additional disclosures in a table or schedule as long as the triggering credit terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. Several commenters asked the Board to clarify the rules for electronic advertisements. Specifically, they asked whether creditors could utilize the multiple-page advertisement provisions when advertising electronically and if so, asked for guidance on the requirement to reference clearly where the table or schedule begins.

Section 226.16(c) would be amended to cover electronic advertisements. Creditors that advertise using electronic communication would comply with § 226.16(c) if the table or schedule with the additional information is set forth clearly and conspicuously and the triggering credit terms appearing anywhere else in the advertisement clearly refer to the location where the table or schedule begins. Proposed comment 16(c)(1)-2 contains this guidance.

Subpart C--Closed-end Credit

Section 226.17 General Disclosure Requirements

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

Section 226.17(g) allows creditors to defer TILA disclosures when a consumer makes a credit-purchase or requests credit by mail, telephone, or other “electronic means” without face-to-face or direct solicitation by the creditor. In such cases, creditors may delay providing disclosures until the first payment due date, provided certain information is “made available in written form” before the consumer’s request. The rationale underlying the deferral is that creditors cannot provide transaction-specific disclosures in written form as required by the regulation at the time of the consumer’s purchase or request.

Under the March 1998 proposal, creditors offering loan products by “electronic communication” (for example, those offered on the Internet) could not delay providing disclosures under § 226.17(g). The rationale underlying the proposal is that the deferral rule in § 226.17(g) pre-dates Internet banking; “other electronic means” typically involved non-interactive, non-visual means such as telegraph transmissions. The difficulties in providing disclosures for credit requests by mail or telephone are not present for credit requests received by electronic means of communication using visual text. Thus, the March 1998 proposed rule provided that specific disclosures must be provided before transactions are consummated using electronic communication. Most commenters agreed with the Board's position, that the same limitations that apply to requests made by telephone should not apply to electronic means of communication using visual text, such as the Internet.

Several commenters disagreed with the proposed rule and believed that deferral of TILA disclosures should apply to credit requests initiated by electronic communication, even where visual text is used, because of the transaction-specific nature of the disclosures such as the APR and payment schedule. Some commenters believed that the Board's proposal would require creditors to be available at all times to prepare these personalized disclosures. The Board does not intend such a result. As is the case of credit applications by other means, creditors are not required to respond immediately to a request for credit. Also, advances in technology permit creditors to provide transaction-specific disclosures by combining information provided by a consumer with credit programs offered by a creditor.

Other commenters were concerned that some devices using electronic communication, such as automated loan machines or automated teller machines, may not have the same capacity to store and provide disclosures as other means. Machines with the capability to process credit applications or disburse loan proceeds are generally controlled by the creditor or operated by a third party retained by the creditor. Under the March 1998 proposal, creditors have the responsibility to ensure proper equipment is in place where consumers receive electronic disclosures via equipment controlled by the creditor. This means that the equipment it operates or controls--including devices such as automated loan machines or automated teller machines--must meet clear and conspicuous standards and must provide a means for consumers to retain disclosures such as printers incorporated into terminals or a screen message offering to transmit the disclosure to the consumer's electronic mail or post office address. (See proposed comment 34(b)-1.)

Section 226.19 Certain Residential Mortgage Transactions

19(b) Certain Variable-rate Transactions

For certain loans with variable-rate features (loans where the APR may increase during the loan term) that are secured by the consumer's principal dwelling, creditors must provide consumers with a booklet and other disclosures generically describing the creditor's product when an application is provided (or a nonrefundable fee is paid, whichever occurs earliest). Creditors may delay the delivery of the booklet and disclosures for up to three business days when, among other circumstances, applications are received by telephone. 12 CFR 226.19(b), n. 45b. Consistent with proposed comment 5b(b)-7 addressing certain home-secured open-end plans, comment 19(b)-2 would be restructured and revised to address when the booklet and disclosures required by § 226.19(b) must be provided when an application is received by electronic communication.

Section 226.24 Advertising

Regulation Z prescribes certain disclosure rules for closed-end loan advertisements, including the use of multiple-page advertisements. Proposed amendments concerning electronic advertisements for open-end credit plans under § 226.16 are discussed above. Although specific requirements differ somewhat for closed-end loans and open-end credit plans, proposed amendments for closed-end loan advertisements are substantially similar to those discussed above for open-end credit plans.

24(b) Advertisement of Rate of Finance Charge

Section 226.24(b) permits creditors to state a simple annual rate 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. Proposed comment 24(b)-6 contains guidance on how this rule applies to rates stated in an electronic advertisement.

24(d) Catalogs and Multiple-page Advertisements

Section 226.24(d) permits creditors using a multiple-page advertisement to state the additional disclosures in a table or schedule so long as the triggering credit terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. Section 226.24(d) would be amended to cover electronic advertisements. Creditors that advertise using electronic communication generally would comply with § 226.24(d) if the table or schedule with the additional information is set forth clearly and the triggering credit terms appearing anywhere else in the advertisement clearly refers to the location where the table or schedule begins. Proposed comment 24(d)-4 contains this guidance.

Subpart D--Miscellaneous

Section 226.27 Spanish Language Disclosures

Section 226.27 provides that all disclosures required by the regulation must be provided in English, except in the Commonwealth of Puerto Rico, where disclosures may be provided in Spanish if the disclosures are available in English upon the consumer's request. The proposal would revise this provision, consistent with the language requirements in Regulation DD (Truth in Savings) and Regulation M (Consumer Leasing). Creditors would be permitted to give disclosures in another language as long as disclosures in English are given to a consumer who requests them. The Board believes that a more permissive rule could promote the delivery of more meaningful disclosures to some consumers.

Subpart F--Electronic Communications

Section 226.34 Requirements for Electronic Communications

34(a) Definition

The definition of the term "electronic communication" in the March 1998 proposed rule remains unchanged. Section 226.34(a) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the March 1998 proposed rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a creditor should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 34(a)-1 contains this guidance.

34(b) Electronic Communication between Creditor and Consumer

Section 226.34(b) would permit creditors to provide disclosures using electronic communication, if the creditor complies with provisions in new § 226.34(d), discussed below.

1. Presenting Disclosures in a Clear and Conspicuous Format

The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and conspicuous format as is the case for all written disclosures under the act and regulation. See §§ 226.5(a)(1), 226.17(a)(1), and 226.31(b).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, creditors generally would have no further duty to determine that consumers are able to receive the disclosures. Creditors do have the responsibility of ensuring the proper equipment is in place in instances where the creditor controls the equipment. Proposed comment 34(b)-1 contains this guidance.

2. Providing Disclosures in a Form the Consumer May Keep

As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the 1998 proposals and interim rule, a creditor would satisfy this requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumers have an adequate opportunity to retain the information.

Consumers communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TILA disclosures presented on-screen. Therefore, when a creditor provides disclosures by electronic communication, to satisfy the retention requirements, the creditor must send the disclosures to a consumer's e-mail address or other location where information may be retrieved at a later date. Proposed comment 34(b)-2 contains this guidance; see also the discussion under § 226.34(e), below. In instances where a creditor controls an electronic terminal used to provide electronic disclosures, a creditor may provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's e-mail address or posting the information at another location such as the creditor's website. See proposed comment 34(b)-1.

3. Timing

Creditors must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. TILA and Regulation Z require that disclosures be given at different times, depending on the credit product or the stage of the credit process at which consumers are receiving cost and other information. For example, generic disclosures, including educational brochures, about home-equity lines of credit and adjustable rate mortgage loans must be given at application. Disclosures, oftentimes containing estimated costs, for home-purchase loans must be given three days after application. Disclosures for loans covered by the Home Ownership and Equity Protection Act, 15 U.S.C. 1601 et seq., must be given three days before consummation. Other loan disclosures have to be given anytime prior to becoming obligated for an extension of credit. These timing rules ensure that consumers have an opportunity to read important information about costs and other terms at different stages of the credit process--when shopping, at or shortly after applying for credit, or before becoming obligated under a plan or consummating a transaction.

To illustrate the timing requirements for electronic communication for an open-end plan, assume that a consumer is interested in opening a credit card account with an on-line retailer and uses a personal computer at home to access the retailer's website on the Internet. The creditor provides disclosures to the consumer about the use of electronic communication (the § 226.34(d) disclosures discussed below) and the consumer responds affirmatively. If the creditor's procedures permit the consumer to open the account and make a purchase immediately thereafter, initial disclosures required under § 226.6 would have to be provided. Thus, the disclosures must automatically appear on the screen or the consumer must be required to access the information before becoming obligated on the plan. The timing requirements for providing initial disclosures would not be met if, in this example, the retailer permitted the consumer simultaneously to open the credit card account and make a purchase and sent initial disclosures to an e-mail address thereafter. Proposed comment 34(b)-3 contains this guidance.

On the other hand, if the retailer delays processing the consumer's request to open a credit card account until the required disclosures have been delivered by e-mail, disclosures would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must receive the disclosures before the first transaction.

Similar rules would apply for the timing requirements for electronic communication for a closed-end transaction. For an installment loan, if the creditor's procedures permit the consumer to consummate the loan on-line, disclosures required under § 226.18 must be provided before the consumer becomes obligated. For example, before consummation, the disclosures must automatically appear on the screen or the consumer must be required to access the disclosures on-line before continuing. The timing requirements would not be met if the creditor permitted the consumer to consummate the loan on-line and later sent disclosures to an e-mail address.

34(c) In-Person Exception

The proposal contains some exceptions to the general rule allowing information required by Regulation Z to be provided by electronic communication; where the exceptions apply, paper disclosures would be required. The exceptions, contained in § 226.34(c), seek to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is a general expectation that consumers would be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 226.34(c), if a consumer becomes obligated for credit in person, the creditor must provide disclosures in paper form. (See § 226.6 for disclosures regarding open-end plans and § 226.18 for closed-end transactions.) The rule would ensure that consumers have the opportunity to consider the costs and terms of the transaction under the timing rules for providing disclosures established by TILA even if the disclosures were provided electronically at an earlier date. Proposed comment 34(c)-1 contains this guidance. The rule also addresses concerns by consumer advocates that providing disclosures by electronic communication is inappropriate when consumers conduct business in person and other aspects of the transaction are paper-based. The Board believes the burden associated with providing paper-based disclosures for in-person transactions is minimal, since other documents will be provided in paper form at that time.

In some instances, creditors may deliver disclosures by electronic communication even if the consumer becomes obligated in person. Under the proposal, if a consumer uses electronic communication to initiate a credit transaction not secured by a dwelling and requests electronic disclosures as provided in paragraph (d), the creditor could provide disclosures electronically.

The creditor would have complied with the timing rules under TILA (before the first transaction for open-end plans, before consummation for closed-end transactions)
and--assuming the disclosures remain accurate--would not be required to provide disclosures in paper form if the consumer later becomes obligated in person. Proposed comment 34(c)-2 contains this guidance. The Board believes this approach fosters TILA's purpose to promote the informed use of credit. Consumers receiving disclosures by electronic communication could benefit by having additional time to review the costs and terms of the transaction rather than receiving them shortly before becoming obligated for the credit, as is often the case for in-person transactions.

For credit secured by a dwelling, however, the proposal requires paper disclosures if the consumer becomes obligated in person. This is the case even though the creditor previously provided electronic disclosures that remain accurate at the time the consumer becomes obligated. The Board believes that most home-secured loans are consummated in person due to legal requirements such as the need to obtain authenticated signatures, and that most institutions would likely provide paper disclosures for in-person transactions in any event. Moreover, special protection is appropriate generally where a consumer's home is at risk for any extension of credit and specifically where predatory lending practices may occur and the consequences could be the loss of a consumer's home.

Rescission Notices

TILA and Regulation Z provide that in certain transactions secured by a consumer's principal dwelling, the consumer has three business days to rescind the transaction after becoming obligated on the debt (§§ 226.15 and 226.23). Consumers with an ownership interest in the dwelling used as security must receive (1) cost disclosures about the transaction, and (2) two copies of a notice that explains consumers' rescission rights and how to effect rescission, including a form the consumer may use to notify the creditor if the consumer decides to rescind the transaction.

In the March 1998 proposed rule, the Board did not explicitly address the electronic delivery of rescission notices. Some commenters asked the Board to clarify whether creditors could provide rescission notices by electronic means, and if so, whether two copies must be sent. Other commenters questioned whether electronic rescission notices should be permitted in any case. One commenter noted that because the potential significant impact of the rescission remedy, creditors would likely continue to deliver paper copies of the rescission notice even if the notices could be delivered electronically.

Under the proposal, creditors must provide notices required under §§ 226.15 and 226.23 in paper form if the consumer either becomes obligated under the plan or consummates the transaction in person. This approach is consistent with other proposed requirements to provide paper-based disclosures for dwelling-secured transactions, and recognizes the significance to both creditors and consumers of ensuring delivery of the notice explaining rescission rights and the accompanying form for the consumer's use. See § 226.34(f)(3) for proposed rules permitting consumers to rescind by electronic communication if the creditor designates an electronic address for that purpose.

<u>34(d) Disclosure Notice</u>

Section 226.34(d) would identify the specific steps required before a creditor could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms M-1 and M-2 and Sample Forms M-4 and M-5 are published to aid compliance with these requirements.

<u>34(d)(2)(i) Notice by Creditor</u>

Section 226.34(d)(2)(i) outlines the information that creditors must provide before electronic disclosures can be given. The creditor must: (1) describe the information to be provided electronically and specify whether the information is also available in paper form or whether the transaction or account is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically, and if it will be available at a location other than the consumer's electronic address, specify for how long and where it can obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the creditor's option, an electronic or a postal address for questions about receiving electronic disclosures, or for updating consumers' electronic addresses, and for seeking assistance with technical or other difficulties (see proposed comments to 34(d)(2)(i)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

The Board also solicits comment on the benefits of requiring an annual notice in paper form to consumers who receive disclosures by electronic communication. The notice would contain general information about receiving electronic disclosures including, for example, a reminder of the toll-free telephone number where consumers may contact the creditor if they have questions regarding their electronic disclosures. Comment is also requested on whether such a notice may be for feasible for certain types of credit (such as open-end) than others.

Under the proposal, the § 226.34(d)(2)(i) disclosures must be provided, as applicable, before the creditor uses electronic communication to deliver any information required by the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must provide an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 34(d)-1). Thus, the § 226.34(d)(2)(i) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Some commenters requested clarification of whether a creditor may use electronic communication to provide some required disclosures while using paper for others. The proposed rule would permit creditors to do so; the disclosure given under § 226.34(d)(2)(i) must specify which TILA disclosures will be provided electronically.

Commenters requested further guidance on a creditor's obligation under the regulation if the consumer chooses not to receive information by electronic communication. A creditor could offer a consumer the option of receiving disclosures in paper form, but it would not be required to do so. A creditor could establish accounts or loans for which disclosures are given only by electronic communication. Section 226.34(d)(2)(i)(A) would require creditors to tell consumers whether or not they have the option to receive disclosures in paper form. Section 226.34(d)(2)(i)(D) would require creditors to provide a toll-free number that consumers could use to inform creditors if they wish to discontinue receiving electronic disclosures. In such cases the creditor must inform the consumer whether credit transaction is also available with disclosures in paper form. Proposed sample disclosure statements in which the consumer has an option to receive electronic or paper disclosures (Form M-4) or electronic disclosures only (Form M-5) are contained in appendix M.

34(d)(2)(ii) Response by Consumer

Proposed § 226.34(d)(2)(ii) would require creditors to provide a means for the consumer to affirmatively indicate that disclosures may be provided electronically. Examples include a "check box" on a computer screen or a signature line (for requests made in paper form). The requirement is intended to ensure that consumers' consent is established knowingly and voluntarily, and that consent to receive electronic disclosures is not inferred from consumers' use of the account or acceptance of general account terms. See proposed comment 34(d)(2)(ii)-1.

34(d)(3) Changes

Creditors would be required to notify consumers about changes to the information that is provided in the notice required by § 226.34(d)(2)(i)--for example, if upgrades to computer software are required. Proposed comment 34(d)(3)-1 contains this guidance.

The notice must include the effective date of the change and be provided before that date. Proposed comment 34(d)(3)-2 would provide that the notice must be sent a reasonable period of time before the effective date of the change. Although the number of days that constitutes reasonable notice may vary, depending on the type of change involved, the comment would provide creditors with a safe harbor: fifteen days' advance notice would be considered a reasonable time in all cases. The same time period is stated in similar proposals under Regulations B, E, and DD published in today's Federal Register. Comment is requested on whether a safe harbor of 15 days is an appropriate time period, and whether a uniform period for changes involving electronic communication is desirable. An alternative approach would adopt notice requirements that are consistent with change-in-terms requirements under the respective regulations. Under this approach, for example, the safe harbor would be 15 days under § 226.9 for Regulation Z, 21 days under § 205.8 for Regulation E, and 30 days under § 230.5 for Regulation DD. Proposed comment 34(b)(3)-3 contains guidance on delivery requirements for the notice of change.

The notice of a change must also include a toll-free telephone number or, at the creditor's option, an address for questions about receiving electronic disclosures. For example, a consumer may call regarding problems related to a change, such as an upgrade to computer software that is not provided by the creditor. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the creditor must inform consumers whether the credit transaction is also available with disclosures in paper form. (See proposed comments 34(d)(3)-4 through -6.)

If the change involves providing additional disclosures by electronic communication, creditors generally would be required to provide the notice in § 226.34(d)(2)(i) and obtain the consumer's consent. That notice would not be required if the creditor previously obtained the consumer's consent to the additional disclosures in its initial notice by disclosing the possibility and specifying which disclosures might be provided electronically in the future. Comment is specifically requested on this approach. A list of additional disclosures may be necessary to ensure that consumers' consent is informed and knowing (provided it does not cause confusion).

<u>34(d)(4) Exceptions</u>

Section 226.5a requires creditors to provide certain disclosures on or with a solicitation or an application to open a credit card account. When solicitations or applications appear electronically, the disclosures required by § 226.5a should appear on the screen before the solicitation or application appears. Proposed comment 5a(a)(2)-7(ii) contains this guidance. Since a solicitation or an application is more analogous to an advertisement than to a transaction-specific disclosure, however, the notices to be provided by the creditor regarding the use of electronic communication under § 226.34(d)(2)(i) would not be required. Proposed § 226.34(d)(4) exempts a solicitation or an application to open a credit or charge card account from § 226.34(d)(1)-(d)(3).

34(e) Address or Location to Receive Electronic Communication

Proposed § 226.34(e) identifies addresses and locations where creditors using electronic communication may send information to the consumer. Creditors may send information to a consumer's electronic address, which is defined in proposed comment 34(e)(1)-1 as an e-mail address that the consumer also may use for receiving communications from parties other than the creditor. For periodic statements, for example, a creditor's responsibility to provide disclosures by electronic communication will satisfied when the information is sent to the consumer's electronic address in accordance with the applicable proposed rules concerning the delivery of disclosures by electronic communication.

Guidance accompanying the March 1998 proposed rule provided that a creditor would not meet delivery requirements by simply posting information to an Internet site such as a creditor's "home page" without appropriate notice on how consumers can access the information. Industry commenters wanted to retain the flexibility of posting disclosures on an Internet website. They did not object to providing a separate notice alerting consumers about the disclosures' availability but requested more guidance on the issue. Consumer advocates and others expressed concern that the mere posting of information inappropriately places the responsibility to obtain disclosures on consumers, and undermines the purpose of the delivery requirements of the regulation.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of creditors may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 226.34(e), a creditor may make disclosures available to a consumer at a location other than the consumer's electronic address. The institution must notify the consumer when the information becomes available and identify the account involved. The notice must be sent to the electronic mail address designated by the consumer; the creditor may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form M-3) is published below; see also proposed comment 34(e)(2)-1.

The Board believes it would be inconsistent with the TILA to require a consumer to initiate a search--for example, to search the website of each card issuer with whom a consumer has a credit card account--to determine whether a disclosure has been provided. The proposed approach ensures that a consumer would not be required to check a creditor's website repeatedly, for example, to learn whether the creditor posted a change in a term that affects the consumer's credit card account.

The requirements of the regulation would be met only if the required disclosure is posted on the website and the consumer is notified of its availability in a timely fashion. For example, creditors offering open-end plans must provide a change-in-terms notice to consumers at least 15 days in advance of the change. (12 CFR 226.9(c).) For a change-in-terms notice posted on the

Internet, a creditor must both post the notice and notify consumers of its availability at least 15 days in advance of the change.

Commenters sought guidance on how long disclosures posted at a particular location must be available to consumers. There is a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 226.34(e)(2), creditors must post information that is sent to a location other than the consumer's electronic mail address for 90 days. Proposed comment 34(e)(2)-3 contains this guidance.

Under the modified proposal, creditors that post information at a location other than the consumer's electronic mail address are required--after the 90-day period--to make disclosures available to consumers upon request for a period of not less than two years from the date disclosures are required to be made, consistent with the record retention requirements under § 226.25. The Board requests comments on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

As discussed above in connection with proposed § 226.34(b), the provisions of proposed § 226.34(e) are based in part upon the Regulation Z requirement that a creditor provide disclosures in a form that the consumer can retain. Certain disclosures, however, are not subject to the retainability requirement. In particular, footnote 8 to § 226.5(a) excepts the disclosures under §§ 226.5a, 226.5b(d), 226.9(a)(2), 226.9(e), and 226.10(b) from this requirement. Proposed comment § 226.34(e)(2)-4 clarifies that the existing exception applies to electronic disclosures and that the requirements of § 226.34(e) would not apply to disclosures referenced in footnote 8, except § 226.5b(d).

The Board believes that the disclosures required to be given along with an application for a home equity line of credit under § 226.5b(d) should not be excepted from the requirements of proposed § 226.34(e). Although the § 226.5b(d) disclosures are not required, under footnote 8, to be provided in retainable form in the context of paper, as a practical matter consumers usually have the opportunity to keep a copy of these disclosures by some means; indeed, the first disclosure listed in § 226.5b(d) is "a statement that the consumer should make or otherwise retain a copy of the disclosures." In addition, the § 226.5b(d) disclosures contain important information that may not be duplicated by disclosures provided later to the consumer (such as the § 226.6 disclosures); in contrast, the disclosures under § 226.5a are mostly repeated in the § 226.6 disclosures.

34(f) Consumer Use of Electronic Communication

Proposed § 226.34(f) would clarify consumers' ability to provide certain information to creditors by electronic communication. For open-end accounts, Regulation Z provides that a consumer must submit a written request for the refund of credit balances, that a cardholder may inform a card issuer about the loss or theft of a credit card by notifying the card issuer orally or in writing, and that a consumer with a billing error must provide a written notice to the creditor to initiate the billing-error resolution process. Under the revised proposal, consumers generally would have the option to use electronic communication for these written notices if the consumer has chosen to receive information by electronic communication. Because the consumer's electronic communication serves as written notice, the creditor could not also require a paper notice. A creditor could, however, specify a particular electronic address for receiving the notices.

The issue of consumers' ability to provide certain information to creditors by electronic communication was not raised in the March 1998 proposed rule. The Board, however, stated in the Regulation E interim rule that financial institutions could require paper confirmation of electronic notices where the regulation allows written confirmation. This approach was consistent with the Regulation E 1996 proposed rule, where the Board stated that (as in the case of an oral communication) if the consumer sends an electronic communication to the financial institution, the institution could require paper confirmation from the consumer (particularly since the consumer was entitled to a paper copy of a disclosure upon request under the Regulation E 1996 proposed rule).

Views were mixed on whether institutions should be permitted to require paper confirmations of electronic notices. Many industry commenters requested that the Board allow institutions to request paper confirmations; some stated that paper confirmations protect both the consumer and the institution. Consumer advocates and other commenters believed it would be unfair to require paper confirmation of an electronic communication from consumers who receive electronic communication from an institution.

Based upon the comments received and further analysis, and subject to certain limitations discussed below, the Board is proposing that consumers be permitted to use electronic communications to comply with the regulation.

<u>34(f)(1) Open-end credit</u>

For open-end transactions, proposed § 226.34(f)(1) permits the consumer to use electronic communications if a creditor uses electronic communication to provide periodic statements which establishes a continuing electronic relationship between the creditor and consumer. If, however, a creditor limits its use of electronic communication to the delivery initial disclosures (that is, if all subsequent disclosures regarding the credit transaction are provided in paper), creditors would not be required to accept an electronic notice, such as a request for refund of credit balances or notice of lost or stolen credit card or of a billing error, from consumers.

34(f)(2) Closed-end credit

For closed-end transactions, a consumer is required to submit a written request in one instance--to request the refund of credit balances. In contrast to open-end transactions, the disclosure requirements imposed on the creditor for closed-end transactions generally end at consummation with the exception of variable-rate transactions. Therefore, proposed § 226.34(f)(2) permits a consumer to use electronic communication to request the refund of credit balances only if the creditor has designated an electronic address for that purpose.

34(f)(3) Rescission

Similar to allowing a consumer to use electronic communication to request the refund of credit balances in a closed-end transaction, proposed § 226.34(f)(3) allows a consumer to rescind by using electronic communication if the creditor has designated an electronic address for that purpose. (See, also, the discussion in § 226.34(c) regarding the use of electronic communication to provide rescission notices.)

34(f)(4) Creditor's designation of address

Section 226.34(f)(4) would provide that a creditor may designate the electronic address that must be used by a consumer for sending electronic communication as permitted by § 226.34(f)(1) through (3).

34(g) Signatures and similar authentication

There are three signature requirements under Regulation Z. Under § 226.4(d) consumers may elect to accept credit insurance or debt cancellation coverage by signing or initialing an affirmative written request after receiving disclosures about the insurance. Under §§ 226.15 and 226.23 (and the corresponding model forms and official staff commentary) consumers may cancel certain home-secured loans or waive this right by providing a written signed notice to the creditor. Under § 226.31(c) (and the official staff commentary) telephone disclosures may be provided if the consumer initiates a change and at consummation new disclosures are provided and the consumer and creditor sign a statement indicating that the telephone disclosures were provided three days before consummation.

Proposed § 226.34(g) would allow consumers and creditors to similarly authenticate signatures where required by the regulation. A similar amendment was made to Regulation E in the 1996 review of the regulation.

The Board indicated in the May 1996 Regulation E proposal that any authentication method should provide the same assurance as a signature in a paper-based system. Since the publication of the amended Regulation E and its accompanying commentary, the Board has been asked to give further guidance on this issue. In the supplementary information to the March 1998 proposed rule, the Board expressed interest in learning about other ways in which authentication in an electronic environment might occur in lieu of a consumer's signature.

Some commenters provided alternatives for verifying a consumer’s identity, including alphanumeric codes (combinations of letters and numbers) or combinations of unique identifiers (such as account numbers combined with a number representing algorithms of the account numbers). In the supplementary information to the March 1998 proposed rule, the Board cited security codes and digital signatures as examples of authentication devices that might meet the requirements of authentication and signatures. Many commenters stated their concern that the Board approved only these or similar methods. These commenters urged the Board to take a flexible approach to this requirement. They suggested that the Board's implied or explicit endorsement of any particular method could hinder the development of new technologies. Further, these commenters requested that the Board take a "wait and see" approach to this issue, to allow the industry to develop alternatives that will result in more security for consumers.

To avoid unduly influencing the development of electronic authentication methods and to encourage innovation and flexibility, the Board will limit its guidance to the general principle that a home-banking or other electronic communication system must use an authentication device that provides the same assurance as a signature in a paper-based system.

Appendix M to Part 226 -- Electronic Communication Model Forms and Clauses

The Board solicits comment on three proposed model forms and two sample forms for use by creditors to aid compliance with the disclosure requirements of §§ 226.34(d) and (e). Appendix M-1 and Appendix M-2 would implement § 226.34(d), regarding the notices that creditors must give prior to using electronic communication to provide required disclosures. Appendix M-3 would implement § 226.34(e), regarding notices to consumers about the availability of electronic disclosures at locations such as the creditor's website. Use of any modified version of these forms would be in compliance as long as the creditor does not delete information required by the regulation or rearrange the format in a way that affects the substance, clarity, or meaningful sequence of the disclosure.

Sample Form M-4 illustrates the disclosures under § 226.34(d) for a credit account. The sample assumes that the creditor also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form M-5 assumes that consumers must accept electronic disclosures if they want to open the account or consummate the transaction.

Additional Issue Raised by Electronic Communication

Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under § 226.28 of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide creditors with the option of giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board will, however, review preemption issues that are brought to the Board's attention. Appendix A outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, creditor, or other interested party following publication of a final rule regarding electronic communication.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R-1043, 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 computer diskettes in any IBM-compatible DOS- or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation Z. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A creditor's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give creditors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). 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 number. The OMB control number is 7100-0199.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR Part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1604(a)) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The revised requirements would be used to ensure adequate disclosure of basic terms, costs, and rights relating to credit transactions, at or before the time consumers enter into a consumer credit transaction and when the availability of consumer credit on particular terms is advertised, for consumers receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit creditors, including small businesses. Creditors are also required to retain records for 24 months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow creditors the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of creditors. With respect to state member banks, it is estimated that there are 988 respondents/recordkeepers and an average frequency of 134,658,472 responses per respondent each year. Therefore the current amount of annual burden is estimated to be 1,873,223 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between creditors and the customer.

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 proposed regulation would be effective. Comments are invited on: (a) the cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure 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 (7100-0199), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 226

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

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation Z. New language is shown inside bold-faced arrows, deletions inside bold-faced brackets.

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

PART 226 -- TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 would continue 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 226.5a is amended by revising paragraph (b)(1)(ii) and adding a new paragraph (b)(1)(iii) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

* * * * *

(b) Required disclosures. * * *

(1) Annual percentage rate. * * *

(ii) **<**Unless paragraph (b)(1)(iii) of this section applies,**=** when variable rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable rate disclosures are provided under paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosures.

< (iii) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate is one that was in effect within the previous 30-day period before the disclosures are sent or posted.**=**

* * * * *

3. Section 226.16 is amended by revising paragraph © to read as follows:

§ 226.16 Advertising.

* * * * *

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

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

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to [that page on which] <the page or location where= the table or schedule begins.

(2) A catalog, [or] multiple-page <, or electronic= advertisement 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

4. Section 226.17 is amended by revising the introductory text in paragraph (g) to read as follows:

§ 226.17 General disclosure requirements.

* * * * *

(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 any other written **[**or electronic**]** communication **<**, excluding electronic communication as described in § 226.34(a),**=** without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form to the consumer or to the public before the actual purchase order or request:

* * * * *

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

§ 226.24 Advertising.

* * * * *

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

(i) The table or schedule is clearly 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 **[**that page on which**]** **<**the page or location where**=** the table or schedule begins.

(2) A catalog, **[**or**]** multiple-page **<**, or electronic**=** advertisement complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a

representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

SUBPART D–Miscellaneous

6. Section 226.27 is revised to read as follows:

§ 226.27 [Spanish] Language <of= disclosures.

All disclosures required by this regulation **<**may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.**=[**shall be made in the English language, except in the Commonwealth of Puerto Rico, where creditors may, at their option, make disclosures in the Spanish language. If Spanish disclosures are made, English disclosures shall be provided on the consumer's request, either in substitution for or in addition to the Spanish disclosures.**]** This requirement for providing English disclosures on request shall not apply to advertisements subject to §§ 226.16 and 226.24 of this regulation.

7. Part 226 is amended by adding a new Subpart F to read as follows:

<Subpart F -- Electronic Communications

§ 226.34 Requirements for electronic communications.

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

(b) Electronic communication between creditor and consumer. Except as provided in paragraph (c) of this section, a creditor that complied with paragraph (d) of this section may provide by electronic communication any information required by this regulation to be in writing. The creditor shall make the disclosures required by this part clearly and conspicuously and in a form that the consumer may keep.

(c) In-person exception. (1) General. When a consumer becomes obligated on an open-end plan or consummates a closed-end transaction in person, the disclosures required under § 226.6 or § 226.18, respectively, shall be provided in paper form; the notice of right to cancel shall also be provided in paper form if, in connection with the plan or transaction, a consumer has a right to rescind under § 226.15 or § 226.23.

(2) Credit not secured by a dwelling. For credit not secured by a dwelling, paragraph (c)(1) of this section does not apply if the consumer previously requested the credit by electronic communication and disclosures were provided in compliance with paragraph (d)(2)(i) of this section and (d)(2)(ii) of this section at or around that time.

(d) Disclosures. (1) General. Except as provided under paragraph (d)(4) of this section, the disclosure notice required by paragraph (d)(2) of this section shall be provided in a manner substantially similar to the applicable model form set forth in Appendix M of this part (Model Forms M-1 and M-2).

(2) Notice by creditor. (i) A creditor shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the credit is offered only with electronic disclosures;

(B) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(C) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(D) Provide a toll-free telephone number and, at the creditor's option, an address for questions about receiving electronic disclosures, for updating consumers' electronic addresses, and for seeking technical or other assistance related to electronic communication.

(ii) Response by consumer. A creditor shall provide a means for the consumer to accept or reject electronic disclosures.

(3) Changes. (i) A creditor shall notify affected consumers of any change to the information provided in the notice required by paragraph (d)(2)(i) of this section. The notice shall include the effective date of the change and must be provided before that date. The notice shall also include a toll-free telephone number, and, at the creditor's option, an address for questions about receiving electronic disclosures.

(ii) In addition to the notice under (d)(3)(i) of this section, if the change involves providing additional disclosures by electronic communication, a creditor shall provide the notice in paragraph (d)(2)(i) of this section and obtain the consumer's consent. A notice is not required under paragraph (d)(2)(i) if the creditor's initial notice states that additional disclosures may be provided electronically in the future and specifies which disclosures could be provided.

(4) Exception. A solicitation or an application to open an account referenced in § 226.5a shall be exempt from paragraphs (d)(1) through (d)(3) of this section.

(e) Address or location to receive electronic communication. A creditor that uses electronic communication to provide information required by this regulation shall:

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

(2) Post the information for at least 90 days at a location such as a website, and send a notice to the consumer when the information becomes available. Thereafter the information shall be available upon request for a period of not less than two years from the date disclosures are required to be made. The notice required by this paragraph (e)(2) shall identify the account involved, shall be sent to an electronic address designated by the consumer (or to a postal address, at the creditor's option), and shall be substantially similar to the model form set forth in Appendix M of this part (Model Form M-3).

(f) Consumer use of electronic communication. (1) Open-end credit plans. If a creditor uses electronic communication to provide periodic statements, the consumer also may use electronic communication to:

(i) Request a refund under § 226.11(b);

(ii) Notify the creditor of the theft or loss of a credit card under § 226.12(b)(3);

(iii) Assert a claim or defense under § 226.12(c); and

(iv) Notify the creditor of a billing a error under § 226.13(b).

(2) Closed-end credit. A consumer may request a refund of any credit balance under § 226.21(b) by electronic communication if the creditor has designated an electronic address for that purpose.

(3) Rescission. A consumer may exercise or waive a right to rescind under § 226.15 or § 226.23 by electronic communication only if the creditor has designated an electronic address for that purpose.

(4) Creditor's designation of address. A creditor may designate the electronic address or location that must be used by a consumer for sending electronic communication under this paragraph.

(g) Signatures and similar authentication. Where a writing is required to be signed or initialed, for purposes of an electronic communication, it may be similarly authenticated.**=**

9. Part 226 is amended by adding a new Appendix M to read as follows:

<APPENDIX M TO PART 226 -- Electronic Communication Model Forms and Clauses

M-1 Model Disclosures for Electronic Communication (§ 226.34(d))
(Disclosures Available in Paper or Electronically)

M-2 Model Disclosures for Electronic Communication (§ 226.34(d))
(Disclosures Available Only Electronically)

M-3 Model Notice for Delivery of Information Posted at Certain Locations (§ 226.34(e))

M-4 Sample Form for Electronic Communication (§ 226.34(d))
(Disclosures Available in Paper or Electronically)

M-5 Sample Form for Electronic Communication (§ 226.34(d))
(Disclosures Available Only Electronically)

M-1 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 226.34(d))
(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Truth in Lending Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

C You can choose to receive the following information in paper form or electronically: (description of specific disclosures to be provided electronically).

C How would you like to receive this information

9 I want paper disclosures. 9 I want electronic disclosures.

C [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]

C [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

C To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements?

9Yes 9No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

9Yes 9No

C To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

M-2 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 226.34(d))
(Disclosures Available Only Electronically)

You will receive important information required by the Truth in Lending Act electronically.

Read this notice carefully and keep a copy for your records.

C The following information will be provided electronically: (description of specific disclosures to be provided electronically).

C This credit transaction is not available unless you accept electronic disclosures.

C [We may provide the following additional disclosures electronically in the future (description of specific disclosures).]

C [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

C To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

9Yes 9No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

9Yes 9No

Do you want this credit transaction with electronic disclosures?

9Yes 9No

C To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

M-3 MODEL NOTICE FOR DELIVERY OF INFORMATION POSTED AT CERTAIN LOCATIONS (§ 226.34(e))

Information about your (identify account) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for ___ days.

M-4 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 226.34(d))
(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Truth in Lending Act in paper form or electronically.

Read this notice carefully and keep a copy for your records.

C You can choose to receive the following information in paper form or electronically: Terms and Conditions of our Credit Card Account, monthly statements, and change-in-terms notices.

C Please indicate how you would like to receive this information:

9 I want paper disclosures 9 I want electronic disclosures

C If you choose electronic disclosures, this information will be available at our Internet website: *http://www.__________.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we w send you a message at your e-mail address:

insert address

C To receive this information electronically, you will need: a minimum web browser version of (Brow name). Do you have access to a computer that satisfies these requirements?

9 Yes 9 No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

9 Yes 9 No

C To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at ____________*.help@isp.com.*

M-5 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 226.34(d))
(Disclosures Available Only Electronically)

You will receive important information required by the Truth in Lending Act electronically.

Read this notice carefully and keep a copy for your records.

C The following information will be provided electronically: Terms and Conditions of our Credit Card Account, monthly statements, and change-in-terms notices.

C This electronic fund transfer service is available only if you accept these disclosures electronically.

C Information about your account will be available at our Internet website: *http://www.__________.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

insert address

C To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

9 Yes **9** No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

9 Yes **9** No

C Do you want this electronic fund transfer service with electronic disclosures?

9 Yes **9** No

C To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at 1-*800-xxx-xxxx* or by electronic mail at ____________*.help@isp.com.*=

10. In Supplement I to Part 226, Section 226.5a--Credit and Charge Card Applications and Solicitations, under 5a(a)(2) Form of Disclosures, a new paragraph 7. is added to read as follows:

SUPPLEMENT I TO PART 226--OFFICIAL STAFF INTERPRETATIONS

* * * * *

SUBPART B--OPEN-END CREDIT

* * * * *

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

* * * * *

5a(a) General rules.

5a(a)(2) Form of Disclosures

* * * * *

<7. Electronic applications or solicitations. i. Format and content of disclosures. The format and the content of disclosures (other than the accuracy of variable rates) for applications or solicitations made available by electronic communication must comply with:

A. Section 226.5a(c), if the application or solicitation is sent to a consumer's electronic mail address.

B. Section 226.5a(e), if the application or solicitation is made available at another location such as an Internet website.

ii. Timing. The disclosures required by § 226.5a must appear on the screen before the solicitation or application appears electronically.=

* * * * *

11. In Supplement I to Part 226, Section 226.5b--Requirements for Home Equity Plans, under 5b(b) Time of Disclosures, a new paragraph 7. is added to read as follows:

* * * * *

5b(b) Time of Disclosures

* * * * *

<7. Applications available by electronic communication. If an application is available by electronic communication such as on a creditor's website, the disclosures and a brochure must appear before an application is provided.=

* * * * *

12. In Supplement I to Part 226, Section 226.16--Advertising, the following amendments are made:

a. The heading 16(c) Catalogs and multiple-page advertisements. is revised; and

b. Under Paragraph 16(c)(1)., paragraph 1. is revised and a new paragraph 2. is added. The addition and revisions read as follows:

* * * * *

Section 226.16--Advertising

* * * * *

16(c) Catalogs, [and] multiple-page <, and 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] multiple page<, or electronic= advertisement. The rule applies only if the catalog, [or] multiple page<, or electronic= advertisement contains one or more of the triggering terms from § 226.16(b).

<2. Electronic communication. If an advertisement using electronic communication uses 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 page or location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information.=

* * * * *

13. In Supplement I to Part 226, Section 226.19--Certain Residential Mortgage and Variable-Rate Transactions, under 19(b) Certain variable-rate transactions., paragraph 2. is revised to read as follows:

* * * * *

SUBPART C--CLOSED-END CREDIT

* * * * *

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

* * * * *

19(b) Certain variable-rate transactions.

* * * * *

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

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

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

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

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

v. Electronic applications. In cases where the creditor makes applications available by electronic communication such as on a creditor's website, the disclosures required under this section must appear on-line before an application is provided.**=**

* * * * *

14. In Supplement I to Part 226, Section 226.24--Advertising, the following amendments are made:

a. Under 24(b) Advertisement of rate of finance charge., a new paragraph 6. is added; and

b. Under 24(d) Catalogs and multiple-page advertisements., the heading and paragraph 2. are revised and a new paragraph 4. is added.

The revisions and additions would read as follows:

Section 226.24--Advertising

* * * * *

24(b) Advertisement of rate of finance charge.

* * * * *

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

* * * * *

24(d) Catalogs, **[**and**]** multiple-page **<**, and electronic**=** advertisements.

* * * * *

2. General. Section 226.24(d) permits creditors to put credit information together in one place in a catalog, **[**or**]** multiple page**<**, or electronic**=** advertisement. The rule applies only if the catalog, **[**or**]** multiple page**<**, or electronic**=** 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 advertising. If an advertisement using electronic communication uses 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 page or location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information (but see comment 24(b)-6).**=**

* * * * *

15. In Supplement I to Part 226, a new Subpart F--Electronic communication, is added to read as follows:

* * * * *

<SUBPART F-- ELECTRONIC COMMUNICATION

Section 226.34--Requirements for Electronic Communication

34(a) Definition

1. Coverage. Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A creditor that provides disclosures by facsimile

should comply with the requirements for electronic communication unless the creditor knows that the disclosures will be received in paper form.

34(b) Electronic Communication between Creditor and Consumer

1. Disclosures provided on creditor's equipment. Creditors that control equipment providing electronic disclosures to consumers (for example, computer terminals in an creditor's lobby or kiosks located in public places) must ensure that the equipment satisfies the regulation's requirements to provide disclosures in a clear and conspicuous format and in a form that the consumer may keep. A creditor that controls the equipment may provide a printer for consumers' use in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the creditor's website.

2. Retainability. Creditors must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TILA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the creditor also must send them to the consumer's designated electronic mail address or to another location, for example, on the creditor's website, where the information may be retrieved at a later date.

3. Timing and delivery. When a consumer opens a credit card account and makes a purchase with the card (or when a consumer consummates a loan) on the Internet, for example, in order to meet the timing and delivery requirements, creditors must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the

consumer is allowed to open a credit card account and make a purchase at that time before receiving the disclosures. For example, a creditor can provide a link to electronic disclosures appearing on a separate page as long as consumers cannot bypass the link and they are required to access the disclosures before making a purchase (or consummating a loan).

34(c) Exceptions

1. Redisclosure required. Section 226.34(c) requires certain disclosures in paper form prior to consummation, even if they have been provided electronically at an earlier date, and redisclosure would not otherwise be required.

2. Initial disclosures in paper form. If a consumer opens a credit account or consummates a credit transaction in person the creditor generally must provide initial disclosures in paper form. For example, if a consumer visits a creditor's office to close a loan, disclosures are required before consummation and they must be provided in paper form; directing the consumer to disclosures posted on the creditor's website would not be sufficient. If, however, a consumer applies for credit on the Internet, a creditor may send disclosures electronically at or around that time even though the creditor's procedures require the consumer to visit an office at a later time to complete the transaction (for example, to close the loan).

34(d) Disclosure Notice

1. Consumer's affirmative responses. Even though a consumer accepts electronic disclosures in accordance with § 226.34(d)(2)(ii), a creditor may deliver disclosures by electronic communication only if the consumer provides an electronic address where one is required, and responds affirmatively to questions about technical requirements and the ability to print or download information (see sample forms M-4 and M-5 in Appendix M to this part).

34(d)(2)(i) Notice by Creditor

1. Toll-free telephone number. The number must be toll-free for nonlocal calls made from an area code other than the one used in the creditor's dialing area. Alternatively, a creditor may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. Creditor's address. Creditors have the option of providing either an electronic or postal address for consumers' use in addition to the toll-free telephone number.

3. Discontinuing electronic disclosures. Consumers may use the toll-free number (or optional address) if they wish to discontinue receiving electronic disclosures. In such cases, the creditor must inform consumers whether the credit transaction is also available with disclosures in paper form.

34(d)(2)(ii) Response by consumer

1. Nature of consent. Consumers must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from consumers' use of an account or acceptance of general account terms.

34(d)(3) Changes

1. Examples. Examples of changes include a change in technical requirements, such as upgrades to computer software affecting the creditor's disclosures provided on the Internet.

2. Timing for notices. A notice of a change must be sent a reasonable period of time before the effective date of the change. The length of a reasonable notice period may vary, depending on the type of change involved; however, fifteen days is a reasonable time for providing notice in all cases.

3. Delivery of notices. A creditor meets the delivery requirements if the notice of change is sent to the address provided by the consumer for receiving other disclosures. For example, if the consumer provides an electronic address to receive notices about periodic statements posted at the creditor's website, the same electronic address could be used for the change notice. The consumer's postal address must be used, however, if the consumer consented to additional disclosures by electronic communication when receiving the initial notice under § 226.34(d)(2)(i), but provided a postal address to receive periodic statements in paper form.

4. Toll-free number. See comment 34(d)(2)(i)-1.

5. Creditor's address. See comment 34(d)(2)(i)-2.

6. Consumer inquiries. Consumers may use the toll-free number (or optional address) for questions or assistance with problems related to a change, such as an upgrade to computer software, that is not provided by the creditor. Consumers may also use the toll-free number if

they wish to discontinue receiving electronic disclosures; in such cases, the creditor must inform consumers whether the credit transaction is also available with disclosures in paper form.

34(e) Address or location to receive electronic communication.

Paragraph 34(e)(1)

1. Electronic address. A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the creditor.

Paragraph 34(e)(2)

1. Identifying account involved. A creditor is not required to identify an account by reference to the account number. For example, where the consumer does not have multiple accounts, and no confusion would result, the creditor may refer to "your credit card account," or when the consumer has multiple accounts the creditor may use a truncated account number.

2. Effective delivery. Delivery by posting to a location other than the consumer's electronic mail address is effective only after the creditor posts and notifies the consumer when the information becomes available.

3. Availability. Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 226.34(e)(2) is sent to the consumer, whichever occurs later.

4. Certain open-end disclosures. The disclosures required under §§ 226.5a, 226.9(a)(2), 226.9(e), and 226.10(b) and referenced in footnote 8 shall be exempt from § 226.34(d)(1).**=**

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,
Secretary of the Board.
BILLING CODE 6210-01-P