

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 202

[Regulation B; Docket No. R-1040]

### Equal Credit Opportunity

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is requesting comment on proposed revisions to Regulation B, which implements the Equal Credit Opportunity 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 applicant agrees to such delivery. (A similar rule was also proposed under various other consumer financial services 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-1040, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be

inspected in room MP-500 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:** Jane E. Ahrens, Senior Counsel, or Natalie E. Taylor, Staff Attorney, 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 Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR part 202) implements the act.

The ECOA and Regulation B 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 communication 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 ECOA and Regulation B. 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 communication 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 March 1998 proposed rules. It is intended to provide specific guidance for creditors that choose to use electronic communication to comply with Regulation B's requirements to provide written disclosures, and to ensure effective delivery of disclosures to applicants 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. 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 modified proposal for Regulation B would not contain this in-person exception as the Board does not believe the exception is necessary given the timing and delivery provision for providing information, as discussed below under 4(e)(2).

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 applicant can receive and retain electronic disclosures—through a standardized disclosure statement—before obtaining applicants' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain applicants' affirmative consent, creditors would be permitted to use electronic communication. As a general rule a creditor would be permitted to offer the option of receiving electronic disclosures to all applicants, whether they initially contact the creditor by electronic communication or otherwise.

Creditors would have the option of delivering disclosures to an e-mail address designated by the applicant 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 applicants 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 a "clear and conspicuous" standard, must be in a form that the applicant can retain, and would be subject to the format and timing rules in Regulation B. For example, a creditor that provides electronic disclosures and denies an applicant's credit request must provide an electronic adverse action notice

within 30 days after receiving a completed application.

Creditors generally must provide a means for applicants to confirm the availability of equipment to receive and retain electronic disclosure documents. A creditor would not otherwise have a duty to verify applicants' 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. Applicants' 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 communication 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 B. 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 E, M, Z, 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 703 of the ECOA, the Board

proposes to amend Regulation B to permit creditors to use electronic communication to provide disclosures and other information required by the act and 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.

#### Section 202.4 General Rules

##### 4(e) Electronic Communication

*4(e)(1) Definition.* The definition of the term "electronic communication" in the March 1998 proposed rule remains unchanged. Section 202.4(e)(1) 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 4(e)(1)-1 contains this guidance.

*4(e)(2) Electronic Communication between Creditor and Applicant.* Section 202.4(e)(2) would permit creditors to provide disclosures using electronic communication, if the creditor complies with provisions in new § 202.4(e)(3), discussed below.

##### 1. Presenting Disclosures in a Clear and Conspicuous Format

Currently, Regulation B does not expressly require creditors to present

required information in a clear and conspicuous format. In contrast, Regulations DD (Truth in Savings), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) all require that information be provided in a clear and conspicuous (or conspicuous or clear and readily understandable) format. Because clarity requirements for written disclosures (whether electronic or not) exist for those regulations, the Board requested comment in the March 1998 proposed rule on whether these requirements should be extended to electronic communication under Regulation B. Also, the Board recently issued a proposed rule for Regulation B as part of its periodic review of regulations. As part of the review, the Board requested comment on whether the "clear and conspicuous" requirement should apply to all—paper or electronic—disclosures and information required by Regulation B. (64 FR 44581, August 16, 1999).

Most commenters to the March 1998 proposed rule suggested that the Board adopt the clear and conspicuous requirement for electronic communication under Regulation B. These commenters noted that the requirements for electronic communication should be consistent among the regulations, and that extension of this requirement to Regulation B would not be burdensome. A few commenters, however, suggested that either the Board adopt the clear and conspicuous requirement for all disclosures under the regulation—paper or electronic—or that it leave the requirement as it is. They argued that imposing a different standard for paper and electronic disclosures might result in applicants receiving disclosures in different formats based on how they apply for credit and for what product they apply.

The proposal would extend a "clear and conspicuous" requirement to electronic communication under Regulation B, consistent with the proposed changes to Regulation B discussed above. See § 202.4(d) of the August 16, 1999 proposed rule for Regulation B (64 FR 44581). 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.

When applicants 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 applicants 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 4(e)(2)–1 contains this guidance.

## *2. Providing Disclosures in a Form the Applicant May Keep*

Currently under Regulation B, only one notice (§ 202.9(a)(3)(i)(B), regarding business credit) must be provided in a form the applicant may retain. On the other hand, Regulations DD, E, M, and Z all require that information be provided in a retainable form. In the March 1998 proposed rule, the Board requested comment on whether a retainability requirement should be extended to electronic communication under Regulation B generally.

Most commenters supported a retainability requirement for electronic communication under Regulation B. These commenters noted that the requirements for electronic communication should be as consistent as practicable for all of the regulations, and that extension of this requirement would not be burdensome. Some commenters, however, supported leaving the requirement as it is. They believe a retainability requirement for disclosures sent by electronic communication would discourage the use of electronic communication by creating different rules for disclosures sent by mail and those sent by electronic communication. As part of its August 1999 proposed rule for Regulation B, discussed above, the Board requested comment on whether a “retainability” requirement should apply to all—paper or electronic—disclosures and information required by Regulation B. See § 202.4(d) of the August 16, 1999 Regulation B proposed rule (64 FR 44581).

Under the 1998 proposals and interim rule, a creditor would satisfy the retainability 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 applicants have an adequate opportunity to retain the information.

Applicants 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), an applicant may not have the ability at a given time to preserve ECOA 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 an applicant's e-mail address or other location where information may be retrieved at a later date. Proposed comment 4(e)(2)–2 contains this guidance; see also the discussion under § 202.4(e)(4), below. In instances where a creditor controls an electronic terminal used to provide electronic disclosures, a creditor may provide equipment for the applicant to print a paper copy in lieu of sending the information to the applicant's e-mail address or posting the information at another location such as the creditor's website. See proposed comment 4(e)(2)–1.

## *3. Timing*

Creditors must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, under §§ 202.9(a)(1) and (2), a creditor must send a written notice within 30 days after receiving a completed application, if the creditor takes adverse action.

To illustrate the timing requirements for electronic communication, assume that a consumer is interested in obtaining a loan and uses a personal computer at home to access the creditor's website on the Internet. The creditor provides disclosures to the consumer about the use of electronic communication (the § 202.4(e)(3) disclosures discussed below) and the consumer responds affirmatively. If the creditor's procedures permit the consumer to apply for a loan at that time, and the creditor denies the credit request, the written notice required by § 202.9 must be provided. Under the proposal, the creditor would satisfy the regulation's timing requirements if, within 30 days of receiving the completed application, an adverse action notice is sent to the applicant's e-mail address, or is posted on the creditor's website and the applicant is informed that the notice is available.

If an applicant is transacting business at a creditor's website and is at a point in the transaction where in order to go forward the applicant must receive disclosures, the disclosures must appear on the screen. By displaying the disclosures on the screen, creditors meet the timing and delivery requirements of the regulation. For example, if an applicant applies over the Internet for a loan to purchase a principal dwelling, the request for monitoring information required by § 202.13(a) and the disclosure required by § 202.13(c) concerning the collection of the information must appear on the screen before the application can be sent to the creditor for processing. The timing

requirements for requesting the information and providing the disclosure would not be met if, in this example, the creditor permitted the applicant to complete the application and apply for credit and sent the request for monitoring information and the applicable disclosure to an e-mail address thereafter. Proposed comment 4(e)(2)–3 contains this guidance.

*4(e)(3) Disclosure Notice.* Section 202.4(e)(3) would identify the specific steps required before a creditor could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Sample Forms C–11, C–12, C–14, and C–15 are published to aid compliance with these requirements.

*4(e)(3)(i) Notice by Creditor.* Section 202.4(e)(3)(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 credit product 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 applicant's electronic address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the applicant 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 applicants' electronic addresses, and for seeking assistance with technical or other difficulties (see proposed comments to 4(e)(3)(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 applicants.

Under the proposal, the § 202.4(e)(3)(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 applicants 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 applicants must be informed whether there is also an option to receive the information in paper form. Applicants must provide an e-mail address where one is required. Technical requirements must also be stated, and applicants 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 4(e)(3)–1). Thus, the § 202.4(e)(3)(i) disclosures should allow applicants 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 § 202.4(e)(3)(i) must specify which ECOA disclosures will be provided electronically.

Commenters requested further guidance on a creditor's obligation under the regulation if the applicant chooses not to receive information by electronic communication. A creditor could offer an applicant the option of receiving disclosures in paper form, but it would not be required to do so. A creditor could establish credit products for which disclosures are given only by electronic communication. Section 202.4(e)(3)(i)(A) would require creditors to tell applicants whether or not they have the option to receive disclosures in paper form. Section 202.4(e)(3)(i)(D) would require creditors to provide a toll-free number that applicants could use to inform creditors if they wish to discontinue receiving electronic disclosures. In such cases the creditor must inform the applicant whether the credit product is also available with disclosures in paper form. Proposed sample notices in which the applicant has an option to receive electronic or paper disclosures (Form C–14) or electronic disclosures only (Form C–15) are contained in appendix C.

**4(e)(3)(ii) Response by Applicant.** Proposed § 202.4(e)(3)(ii) would require creditors to provide a means for the applicant to affirmatively indicate that information 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 applicants' consent is established knowingly and voluntarily, and that consent to receive electronic disclosures is not inferred from the submission of an application for credit. See proposed comment 4(e)(3)(ii)–1.

**4(e)(3)(iii) Changes.** Creditors would be required to notify applicants about changes to the information that is provided in the notice required by § 202.4(e)(3)(i)—for example, if upgrades to computer software are required. Proposed comment 4(e)(3)(iii)–1 contains this guidance.

The notice must include the effective date of the change and be provided before that date. Proposed comment 4(e)(3)(iii)–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 E, Z, 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. Proposed comment 4(e)(3)(iii)–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. Applicants may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the creditor must inform applicants whether the credit product is also available with disclosures in paper form. (See proposed comments 4(e)(3)(iii)–4 through –6).

If the change involves providing additional disclosures by electronic communication, creditors generally would be required to provide the notice in § 202.4(e)(3)(i) and obtain the applicant's consent. That notice would not be required if the creditor previously obtained the applicant'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 applicants' consent is informed and knowing (provided it does not cause confusion).

**4(e)(4) Address or Location to Receive Electronic Communication.** Proposed

§ 202.4(e)(4) identifies addresses and locations where creditors using electronic communication may send information to the applicant. Creditors may send information to an applicant's electronic address, which is defined in proposed comment 4(e)(4)(i)–1 as an e-mail address that the applicant also may use for receiving communications from parties other than the creditor. For notices of action taken, for example, a creditor's responsibility to provide notice under § 202.9 will be satisfied when the notice of action taken is sent to the applicant's electronic address in accordance with the applicable proposed rules concerning 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 applicants 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 applicants 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 applicants, 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 applicant may retrieve them under secure conditions. Under § 202.4(e)(4), a creditor may make disclosures available to an applicant at a location other than the applicant's electronic address. The creditor must notify the applicant when the information becomes available and identify the credit transaction involved. The notice must be sent to the electronic mail address designated by the applicant; the creditor may, at its option, permit the applicant to designate a postal address. A proposed sample notice (Form C–13) is published below; see also proposed comment 4(e)(4)(ii)–1.

The Board believes it would be inconsistent with the ECOA to require an applicant to initiate a search—for example, to search the website of each creditor with whom the applicant applied for credit—to determine whether a disclosure has been provided.

The proposed approach ensures that an applicant would not be required to check a creditor's website repeatedly, for example, to learn whether the creditor posted a notice of adverse action.

The requirements of the regulation would be met only if the required information is posted on the website and the applicant is notified of its availability in a timely fashion. For example, creditors must provide adverse action notices to applicants within 30 days after receiving a completed application. For an adverse action notice posted on the Internet, a creditor must both post the notice and notify the applicant of its availability within 30 days of receiving a completed application.

Commenters sought guidance on how long disclosures posted at a particular location must be available to applicants. There is a variety of circumstances when an applicant may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 202.4(e)(4), creditors must post information that is sent to a location other than the applicant's electronic mail address for 90 days. Proposed comment 4(e)(4)(ii)-2 contains this guidance.

Under the modified proposal, creditors that post information at a location other than the applicant's electronic mail address are required—after the 90 day period—to make disclosures available to applicants upon request for a period of not less than 25 months, except as otherwise provided, from the date disclosures are required to be made, consistent with the record retention requirements under § 202.12(b). (See § 202.12(b) of the August 16, 1999 proposed rule for Regulation B (64 FR 44581). The Board requests comment on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

**4(e)(5) Applicant Use of Electronic Communication.** Proposed § 202.4(e)(5) would clarify applicants' ability to provide certain information to creditors by electronic communication. Regulation B provides that an applicant, upon written request, is entitled to receive a copy of an appraisal report under § 202.5a and a statement of specific reasons for adverse action under § 202.9(a)(3)(ii). Under the proposal, applicants generally would have the option to use electronic communication for these written notices if the applicant has chosen to receive information by electronic communication. Because the applicant's

electronic communication serves as written notice, the creditor could not also require paper notice. Creditors could, however, specify a particular electronic address for receiving the notices.

The issue of the applicant's ability to provide certain information to creditors by electronic communication was not raised in the March 1998 proposed rule for Regulation B. In issuing the March 1998 Regulation E interim rule, the Board stated that financial institutions could require paper confirmation of electronic notices in the two instances where the regulation allows written confirmation—stop-payment notices and notices of error. This approach was consistent with guidance provided in the May 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 May 1996 proposal).

Views were mixed on whether financial institutions should be permitted to require paper confirmations of electronic notices. Many industry commenters requested that the Board allow financial institutions to request paper confirmations; some stated that paper confirmations protect both the consumer and the financial 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 a financial institution.

Based upon the comments received and further analysis, and subject to certain limitations discussed below, the Board is proposing that applicants be permitted to provide electronically any information that an applicant is required to provide a creditor to exercise the applicant's rights under the regulation, such as the request for a written statement of reasons. If a creditor uses electronic communication to provide disclosures about appraisal rights under § 202.5a and notices under § 202.9, it is appropriate to allow applicants to use electronic communication to provide notices to the creditor. If, however, a creditor limits its use of electronic communication to the delivery of information required at the time the application is taken—the disclosure concerning the collection of monitoring information for home-secured loans—creditors would not be

required to accept electronic communication from applicants.

**4(e)(5)(ii) Creditor's Designation of Address.** Section 202.4(e)(5)(ii) would provide that a creditor may designate the electronic address that must be used by an applicant for sending electronic communication as permitted by § 202.4(e)(5)(i).

**4(f) Foreign Language Disclosures.** To provide consistency among the regulations, the Board would add guidance permitting disclosures to be made in languages other than English (provided they are available in English upon request). This guidance would be set forth in proposed § 202.4(f).

#### *Appendix C to Part 202—Sample Notification Forms*

The Board solicits comment on two proposed sample disclosure forms and three sample notice forms for use by creditors to aid compliance with the disclosure requirements of §§ 202.4(e)(3) and (e)(4). Forms C-11 and C-12 would implement § 202.4(e)(3), regarding the notice that creditors must give prior to using electronic communication to provide required disclosures. Form C-13 would implement § 202.4(e)(4), regarding notices to applicants about the availability of electronic information 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. For example, where a creditor combines Regulation B and Regulation Z disclosures for a credit card account, the creditor may provide a single disclosure statement about electronic delivery.

Sample Form C-14 illustrates the disclosures under § 202.4(e)(3). The sample assumes the creditor also offers paper disclosures for applicants who choose not to receive electronic disclosures. Sample Form C-15 assumes that applicants must accept electronic disclosures if they want to apply for the particular credit product.

#### *Other issues*

##### *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 § 202.11(a) 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. Section 202.11(b)(2) outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a creditor, state, 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-1040, 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 3½ 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 B. 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 7100-0201.

The collection of information requirements that are relevant to this

proposed rulemaking are in 12 CFR part 202. This information is mandatory (15 U.S.C. 1691b(a)(1) and Public Law 104-208, § 2302(a)) to evidence compliance with the requirements of Regulation B and the Equal Credit Opportunity Act. The purpose of the act is to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et seq.*). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Creditors are also required to retain records for 12 to 25 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 and other information 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 4,765 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 123,892 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 adverse action disclosure is confidential between creditors and the applicants involved.

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 (7100-0201), 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 202

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

#### Text of Proposed Revisions

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

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

#### PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

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

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

2. Section 202.4 as proposed to be revised at 64 FR 44595, August 16, 1999, is further amended by adding new paragraphs (e) and (f) to read as follows:

##### § 202.4 General rules.

\* \* \* \* \*

(e) *Electronic communication*—(1) *Definition. Electronic communication* means a message transmitted electronically between an applicant and a creditor in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between creditor and applicant.* A creditor that has complied with paragraph (e)(3) of this section may provide by electronic communication any information required by this regulation to be in writing.



(3) *Disclosure notice.* The disclosure notice required by paragraph (e)(3) of this section shall be clear and conspicuous and in a form the consumer may keep, and shall be provided in a manner substantially similar to the applicable sample notice set forth in Appendix C of this part (Sample Forms C-11 and C-12).

(i) *Notice by creditor.* 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 product 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 applicant'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 applicant 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 applicants' electronic addresses, and for seeking technical or other assistance related to electronic communication.

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

(iii) *Changes.* (A) A creditor shall notify affected applicants of any change to the information provided in the notice required by paragraph (e)(3)(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.

(B) In addition to the notice under paragraph (e)(3)(iii)(A) of this section, if the change involves providing additional disclosures by electronic communication, a creditor shall provide the notice in paragraph (e)(3)(i) of this section and obtain the applicant's consent. A notice is not required under paragraph (e)(3)(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) *Address or location to receive electronic communication.* A creditor that uses electronic communication to provide information required by this regulation shall:

(i) Send the information to the applicant's electronic address; or

(ii) Post the information for at least 90 days at a location such as a website, and send a notice to the applicant when the information becomes available. Thereafter the information shall be available upon request for a period of not less than 25 months, except as otherwise provided, from the date disclosures are required to be made. The notice required by this paragraph (e)(4)(ii) shall identify the credit product or application involved, shall be sent to an electronic address designated by the applicant (or to a postal address, at the creditor's option), and shall be substantially similar to the sample notice set forth in Appendix C of this part (Sample Form C-13).

(5) *Applicant use of electronic communication.* (i) *General.* An applicant may use electronic communication to exercise any right under § 202.5a and § 202.9(a)(3) if the applicant has consented to receive information required by these sections by electronic communication.

(ii) *Creditor's designation of address.* A creditor may designate the electronic address or location that applicants must use if they send electronic communication under this paragraph.

(f) *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request. ◀

3. Appendix C to Part 202 as proposed to be revised at 64 FR 44616, August 16, 1999, is further amended by adding new Forms C-11, C-12, C-13, C-14, and C-15 to read as follows:

#### Appendix C to Part 202—Sample Notification Forms

\* \* \* \* \*

##### Form C-11—Sample Disclosures for Electronic Communication (Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Equal Credit Opportunity Act in paper or electronically.

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

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

- How would you like to receive this information

- ☐ I want paper disclosures.
- ☐ I want electronic disclosures.

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

- [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: (applicant's electronic mail address).]

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

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

- 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).

##### Form C-12—Sample Disclosures for Electronic Communication (Disclosures Available Only Electronically)

You will receive important information required by the Equal Credit Opportunity Act electronically.

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

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

- This credit product is not available unless you accept electronic disclosures.

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

- [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: (applicant's electronic mail address).]

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

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

Do you want this credit product with electronic disclosures?

☐ Yes ☐ No

- 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).

##### Form C-13—Sample Notice for Delivery of Information Posted at Certain Locations

Information about your (identify loan application or credit transaction) is now



available at [website address or other location]. The information discusses (describe the disclosure). It will be available for \_\_\_\_\_ days.

BILLING CODE 6210-01-P

**FORM C-14--SAMPLE NOTICE FOR ELECTRONIC COMMUNICATION**

(Disclosures Available in Paper or Electronically)

**You can choose to receive important information required by the  
Equal Credit Opportunity Act in paper form or electronically.**

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

- You can choose to receive the following information in paper form or electronically: Notice of action taken, notice of the right to a written statement of reasons, statement of reasons, notice of the right to receive a copy of an appraisal report, or appraisal report.
- Please indicate how you would like to receive this information:
  - ☐ I want paper disclosures
  - ☐ I want electronic disclosures
- 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 will send you a message at your e-mail address:

insert address
- 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?
  - ☐ Yes
  - ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?
  - ☐ Yes
  - ☐ No
- 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.

**FORM C-15--SAMPLE NOTICE FOR ELECTRONIC COMMUNICATION**  
(Disclosures Available Only Electronically)**You will receive important information required by the  
Equal Credit Opportunity Act electronically.****Read this notice carefully and keep a copy for your records.**

- The following information will be provided electronically: Notice of action taken, notice of the right to a written statement of reasons, statement of reasons, notice of the right to receive a copy of an appraisal report, or an appraisal report.
- This credit product is available only if you accept these disclosures electronically.
- Information about your loan application or credit transaction 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-xxx. When the information is posted on our website, we will send you a message at your e-mail address:

insert address

- 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?  

☐ Yes                      ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?  

☐ Yes                      ☐ No
- Do you want this credit product with electronic disclosures?  

☐ Yes                      ☐ No
- 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-xxx or by electronic mail at \_\_\_\_\_.help@isp.com. ◀

4. Supplement I to Part 202, as proposed to be revised at 64 FR 44618, August 16, 1999, is further amended under *Section 202.4—General Rules* by adding a new paragraph 4(e) *Electronic Communication* to read as follows:

**Supplement I to Part 202—Official Staff Interpretations**

\* \* \* \* \*

*Section 202.4—General Rules*

\* \* \* \* \*

► 4(e) Electronic Communication

4(e)(1) *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.

4(e)(2) *Electronic communication between creditor and applicant.*

1. *Disclosures provided on creditor's equipment.* Creditors that control equipment providing electronic disclosures to applicants (for example, computer terminals in a 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 the consumer may keep. A creditor that controls the equipment may provide a printer for applicants' use in lieu of sending the information to the applicant'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). Applicants 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), an applicant may not have the ability at a given time to preserve ECOA disclosures presented on-screen. To ensure that applicants have an adequate opportunity to retain the disclosures, the creditor also must send them to the applicant'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 an applicant applies for credit 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 applicant is allowed to apply for credit before receiving the disclosures. For example, a creditor can provide a link to electronic disclosures appearing on a separate page as long as applicants cannot bypass the link and they are required to access the disclosures before completing the application.

4(e)(3) *Disclosure notice.*

1. *Applicant's affirmative responses.* Even though an applicant accepts electronic disclosures in accordance with § 202.4(e)(3)(ii), a creditor may deliver disclosures by electronic communication only if the applicant 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 C-14 and C-15 in appendix C to this part).

Paragraph 4(e)(3)(i)

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 an applicant 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 applicants' use in addition to the toll-free telephone number.

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

Paragraph 4(e)(3)(ii)

1. *Nature of consent.* Applicants must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from an applicant's submission of an application for credit.

Paragraph 4(e)(3)(iii)

1. *Examples.* Examples of changes include a change in technical requirements, such as upgrades to 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 a change is sent to the address provided by the applicant for receiving other disclosures. For example, if the applicant provides an electronic address to receive a notice of action taken, the same electronic address may be used for the change notice. The applicant's postal address must be used, however, if the applicant consented to additional disclosures by electronic communication when receiving the initial notice under § 202.4(e)(3)(i), but provided a postal address to receive the notice of action taken.

4. *Toll-free number.* See comment 4(e)(3)(i)-1.

5. *Creditor's address.* See comment 4(e)(3)(i)-2.

6. *Applicant inquiries.* Applicants 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. Applicants may also use the toll-free number if they wish to discontinue receiving electronic disclosures; in such cases, the creditor must inform applicants whether the credit product is also available with disclosures in paper form.

4(e)(4) *Address or location to receive electronic communication.*

Paragraph 4(e)(4)(i)

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

Paragraph 4(e)(4)(ii)

1. *Identifying application or transaction involved.* A creditor is not required to identify a loan application or credit transaction by reference to a number. For example, where the applicant has not applied for credit with the creditor before, and no confusion would result, the creditor may refer to "your credit card application," or "your home equity line application."

2. *Availability.* Information that is not sent to an applicant'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 § 202.4(e)(4)(ii) is sent to the applicant, whichever occurs later. ◀

\* \* \* \* \*

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

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 99-23137 Filed 9-13-99; 8:45 am]

BILLING CODE 6210-01-P

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 205

[Regulation E; Docket No. R-1041]

### Electronic Fund Transfers

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is requesting comment on proposed revisions to Regulation E, which implements the Electronic Fund Transfer Act. The Board previously published an interim rule that permits financial institutions 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 interim rule (and the proposals), the