

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**

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*Section 202.4—General Rules*

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► 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. ◀

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

**Jennifer J. Johnson,**

*Secretary of the Board.*

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**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

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 interim rule remains in effect. The Board is also publishing for comment technical amendments involving error resolution notices.

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

**ADDRESSES:** Comments, which should refer to Docket No. R-1041, may be mailed to 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 also may 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:** Michael L. Hentrel, Staff Attorney, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. Users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452-3544.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.*, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment plan, or home-banking program. The act and regulation prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers;

procedures for error resolution; and certain rights related to preauthorized EFTs.

The EFTA and Regulation E require a number of disclosures to be provided in writing, presuming that institutions 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 EFTA and Regulation E. 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 institutions that choose to use electronic communication to comply with Regulation E'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. 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, financial institutions 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, financial institutions would be permitted to use electronic communication. As a general rule an institution would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the institution by electronic communication or otherwise. To address concerns about potential

abuses, however, the proposal provides that if a consumer contracts for an EFT service in person, initial disclosures must be given in paper form.

Financial institutions 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 institution's website, for printing or downloading. If the disclosures are posted at a website location, financial institutions generally must notify consumers at an e-mail address about the availability of the information. (Financial institutions 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 readily understandable" standard, and the existing format, timing, and retainability rules in Regulation E. For example, to satisfy the timing requirement, if disclosures are due at the time a consumer contracts for an EFT service, the disclosures would have to appear on the screen before the consumer could complete the transaction.

Financial institutions generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A financial institution would not otherwise have a duty to verify consumers' actual ability to receive, print, or download the disclosures. Some commenters suggested that institutions 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 communication should reduce uncertainty over time

about the ability to use electronic documents for resolving disputes.

The Board's rules require financial institutions to retain evidence of compliance with Regulation E. Specific comment is solicited on the feasibility of complying with a requirement that financial institutions 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.

The interim rule for Regulation E adopted by the Board in 1998 remains in effect. To the extent the interim rule is modified when final action is taken on the current proposal, the Board will provide a reasonable time period before the mandatory compliance date for any new requirements.

Elsewhere in today's **Federal Register**, the Board is publishing similar proposals for comment under Regulations B, 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 904 of the EFTA, the Board proposes to amend Regulation E to permit institutions to use electronic communication to provide the information required by this regulation 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 205.4 General Disclosure Requirements; Jointly Offered Services*

##### 4(a) Form of Disclosures

##### 4(a)(2) Foreign Language Disclosures

To provide consistency among the regulations, the guidance currently contained in comment 4(a)-2 permitting disclosures to be made in languages other than English (provided they are available in English upon request) would be set forth in a new § 205.4(a)(2).

##### 4(c) Electronic Communication

##### 4(c)(1) Definition

The definition of the term "electronic communication" in the interim rule

remains unchanged. Section 205.4(c)(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 interim 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 financial institution should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 4(c)(1)-1 contains this guidance.

##### 4(c)(2) Electronic Communication between Financial Institution and Consumer

Section 205.4(c)(2)(i) would permit financial institutions to provide disclosures using electronic communication, if the institution complies with provisions in new § 205.4(c)(3), discussed below.

##### 1. Presenting Disclosures in a Clear and Readily Understandable 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 readily understandable format as is the case for all written disclosures under the act and regulation. See § 205.4(a).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, financial institutions generally would have no further duty to determine that consumers are able to receive the disclosures. Institutions do have the responsibility of ensuring the

proper equipment is in place in instances where the institution controls the equipment. Proposed comment 4(c)(2)-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 financial institution 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 financial institutions 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 EFTA disclosures presented on-screen. Therefore, when a financial institution provides disclosures by electronic communication, to satisfy the retention requirements, the institution 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 4(c)(2)-2 contains this guidance; see also the discussion under § 205.4(c)(4), below. In instances where an institution controls an electronic terminal used to provide electronic disclosures, an institution 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 institution's website. See proposed comment 4(c)(2)-1.

##### 3. Timing

Institutions must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, initial disclosures must be provided at the time a consumer contracts for an EFT service or before the first transaction. The rule ensures that consumers have an opportunity to read important information about costs and other terms before contracting for or using the service.

To illustrate the timing requirements for electronic communication, assume that an existing customer of a bank is interested in signing up for an on-line bill-payment service and uses a personal

computer at home to access the bank's website on the Internet. The bank provides disclosures to the consumer about the use of electronic communication (the § 205.4(c)(3) disclosures discussed below) and the consumer responds affirmatively. If the bank's procedures permit the consumer to sign up for and use the EFT service at that time, disclosures required under § 205.7 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 contracting for the service (or before the first transaction). The timing requirements for providing initial disclosures would not be met if, in this example, the bank permitted the consumer to sign up for and immediately use an EFT service and sent initial disclosures to an e-mail address thereafter. Proposed comment 4(c)(2)–3 contains this guidance.

On the other hand, assume that a consumer requests an EFT service and the institution delays processing the consumer's request until the required disclosures have been delivered by e-mail. In that case the information 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 contracting for the service or before the first transaction.

#### 4(c)(2)(ii) In-Person Exception

The proposal contains an exception to the general rule allowing information required by Regulation E to be provided by electronic communication; where the exception applies, paper disclosures would be required. The exception, contained in § 205.4(c)(2)(ii), seeks 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 § 205.4(c)(2)(ii), if a consumer contracts for an EFT service in person, the financial institution must provide initial disclosures in paper form. For example, if a consumer signs up for an ATM card while opening an account at a financial institution, initial disclosures are required before contracting for the card (or the first transaction) and they must be provided in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. An institution also complies if a consumer signs up for an EFT service on the

Internet and is sent disclosures electronically at or around that time, even though the institution's procedures require the consumer to visit the institution at a later time to complete the transaction (for example, to complete a signature card). Proposed comment 4(c)(2)(ii)–1 contains this guidance.

#### 4(c)(3) Disclosure Notice

Section 205.4(c)(3) would identify the specific steps required before an institution could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms A–6 and A–7, and Sample Forms A–9 and A–10 are published to aid compliance with these requirements.

#### 4(c)(3)(i) Notice by Financial Institution

Section 205.4(c)(3)(i) outlines the information that financial institutions must provide before electronic disclosures can be given. The financial institution must: (1) describe the information to be provided electronically and specify whether the information is also available in paper form or whether the EFT service 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 be 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 institution's option, an electronic or 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 4(c)(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 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 number where consumers may contact the institution if they have

questions regarding their electronic disclosures.

Under the proposal, the § 205.4(c)(3)(i) disclosures must be provided, as applicable, before the financial institution 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 4(c)(3)–1). Thus, the § 205.4(c)(3)(i) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Some commenters requested clarification of whether a financial institution may use electronic communication to provide some required disclosures while using paper for others. The proposed rule would permit institutions to do so; the disclosure given under § 205.4(c)(3)(i) must specify which EFTA disclosures will be provided electronically.

Commenters requested further guidance on a financial institution's obligation under the regulation if the consumer chooses not to receive information by electronic communication. A financial institution could offer a consumer the option of receiving disclosures in paper form, but it would not be required to do so. A financial institution could establish accounts or services for which disclosures are given only by electronic communication. Section 205.4(c)(3)(i)(A) would require financial institutions to tell consumers whether or not they have the option to receive disclosures in paper form. Section 205.4(c)(3)(i)(D) would require financial institutions to provide a toll-free number that consumers could use to inform institutions if they wish to discontinue receiving electronic disclosures. In such cases the institution must inform the consumer whether the EFT service 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 A-9) or electronic disclosures only (Form A-10) are contained in appendix A.

#### 4(c)(3)(ii) Response by Consumer

Proposed § 205.4(c)(3)(ii) would require financial institutions 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 4(c)(3)(ii)-1.

#### 4(c)(3)(iii) Changes

Financial institutions would be required to notify consumers about changes to the information that is provided in the notice required by § 205.4(c)(3)(i)—for example, if upgrades to computer software are required. Proposed comment 4(c)(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(c)(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 institutions 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, 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. 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 21 days under § 205.8 for Regulation E, 15 days under § 226.9 for Regulation Z, and 30 days under § 230.5 for Regulation DD. Proposed comment 4(c)(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 institution'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 institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform consumers whether the EFT service is also available with disclosures in paper form. (See proposed comments 4(c)(3)(iii)-4 through -6.)

If the change involves providing additional disclosures by electronic communication, institutions generally would be required to provide the notice in § 205.4(c)(3)(i) and obtain the consumer's consent. That notice would not be required if the institution 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).

#### 4(c)(4) Address or Location to Receive Electronic Communication

Proposed § 205.4(c)(4) identifies addresses and locations where institutions using electronic communication may send information to the consumer. Institutions may send information to a consumer's electronic address, which is defined in proposed comment 4(c)(4)(i)-1 as an e-mail address that the consumer also may use for receiving communications from parties other than the financial institution. For notices of preauthorized transfers, for example, a financial institution's responsibility to provide notice under § 205.10(d) will be satisfied when the information is sent to the consumer's electronic address in accordance with the applicable proposed rules concerning delivery of disclosures by electronic communication.

Guidance accompanying the interim rule provided that an institution would not meet delivery requirements by simply posting information to an Internet site such as a financial institution'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 institutions may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 205.4(c)(4), a financial institution 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 financial institution may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form A-8) is published below; see also proposed comment 4(c)(4)(ii)-1.

The Board believes it would be inconsistent with the EFTA to require a consumer to initiate a search—for example, to search the website of each financial institution with which an account is held—to determine whether a disclosure has been provided. The proposed approach ensures that a consumer would not be required to check an institution's website repeatedly, for example, to learn whether the institution posted a change in a term that affects an EFT service used by the consumer.

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, financial institutions must provide a change-in-terms notice to consumers at least 21 days in advance of the change. (12 CFR 205.8(a).) For a change-in-terms notice posted on the Internet, an institution must both post the notice and notify consumers of its availability at least 21 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 § 205.4(c)(4), institutions must post information that is sent to a location other than the consumer's electronic

mail address for 90 days. Proposed comment 4(c)(4)(ii)-2 contains this guidance.

Under the modified proposal, institutions 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 § 205.13(b). The Board requests comment on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

#### 4(c)(5) Consumer Use of Electronic Communication

Proposed § 205.4(c)(5) would clarify consumers' ability to provide certain information to financial institutions by electronic communication. Regulation E provides that a consumer may allege an error or stop payment of a preauthorized EFT by notifying the institution orally or in writing; the institution may require written confirmation of an oral notice of error or stop-payment order. The revised proposal differs from guidance accompanying the interim rule; under the proposal, consumers generally would have the option to use electronic communication for these written notices (including written confirmations) if the consumer has chosen to receive information by electronic communication. Because the consumer's electronic communication serves as written confirmation, the financial institution could not also require paper confirmation. Institutions could, however, specify a particular electronic address for receiving the notices.

In issuing the March 1998 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 consumers be permitted to provide electronically any information that a consumer is required to provide a financial institution to preserve the consumer's rights under the regulation, such as the stop-payment notice and the notice of error. If an institution uses electronic communication to provide disclosures to consumers on a continuing basis, such as change-in-terms notices or periodic statements, it is appropriate to allow consumers to use electronic communication to provide notices to the institution. If, however, an institution limits its use of electronic communication to the delivery of initial disclosures (that is, if all subsequent disclosures regarding the EFT service are provided in paper form), institutions would not be required to accept electronic communication from consumers.

#### 4(c)(5)(ii) Institution's Designation of Address

Section 205.4(c)(5)(ii) would provide that an institution may designate the electronic address that must be used by a consumer for sending electronic communication as permitted by § 205.4(c)(5)(i).

#### Appendix A to Part 205—Model Disclosure Clauses and Forms

The Board solicits comment on three proposed model forms and two sample forms for use by financial institutions to aid compliance with the disclosure requirements of §§ 205.4(c)(3) and (c)(4). Model Forms A-6 and A-7 would implement § 205.4(c)(3), regarding the notice that financial institutions must give prior to using electronic communication to provide required disclosures. Model Form A-8 would implement § 205.4(c)(4), regarding notices to consumers about the availability of electronic disclosures at locations such as the financial institution's website. Use of any modified version of these forms would

be in compliance as long as the institution 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, institutions that combine Regulation E and Regulation DD disclosures on a deposit account can modify the model form to provide a single disclosure statement about electronic delivery of those disclosures.

Sample Form A-9 illustrates the disclosures under § 205.4(c)(3) for an electronic banking service. The sample assumes that the institution also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form A-10 assumes that consumers must accept electronic disclosures if they want to contract for the EFT service.

#### Additional Issues

##### 1. Signature Requirements

Section 205.10(b) requires that preauthorized EFTs be authorized only by a writing signed or similarly authenticated by the consumer. The phrase "or similarly authenticated" was added in the 1996 review of Regulation E. The Official Staff Commentary to Regulation E states that an example of a consumer's authorization that is not in the form of a signed writing but is instead "similarly authenticated" is a consumer's authorization under § 205.10(b) for using a home-banking system. The Board indicated in the supplementary information to the 1996 final rule that the authentication method should provide the same assurance as a signature in a paper-based system. Since the publication of the amended regulation and accompanying commentary, the Board has been asked to give further guidance on this issue. In the supplementary information to the March 1998 interim 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 interim 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.

### 2. 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 § 205.12(b) 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 financial institutions 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 205.12(b)(1) 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, financial institution, or other interested party following publication of a final rule regarding electronic communication.

### 3. Technical Amendment to Error Resolution Notice

In September 1998, the Board revised the time periods for investigating alleged errors involving point-of-sale and foreign-initiated transactions. (63 FR 52115, September 29, 1998.) The amendments to § 205.11 require financial institutions to provisionally credit an account within 10 business days (rather than 20). At the same time, the Board extended the time periods to provisionally credit funds and investigate claims involving new accounts. The amended rule permits institutions to take up to 20 business

days to provisionally credit funds and up to 90 calendar days to complete the investigation. The Board proposes to revise the model error resolution notices contained in Appendix A (Forms A-3 and A-5) to conform with § 205.11 as amended.

### IV. Form of Comment Letters

Comment letters should refer to Docket No. R-1041, 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 and section 904(a)(2) of the EFTA, the Board has reviewed the proposed amendments to Regulation E. 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 financial institution's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give financial institutions 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 Part 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 7100-0200.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR Part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of the Regulation E and the Electronic Fund Transfer Act (EFTA). The revised requirements would be used to ensure adequate

disclosure of basic terms, costs, and rights relating to services affecting consumers using certain home-banking services and consumers receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are also required to retain records for 24 months. This regulation applies to all types of depository institutions, 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 institutions 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 financial institutions. With respect to state member banks, it is estimated that there are 851 respondents/recordkeepers and an average frequency of 85,808 responses per respondent each year. Therefore the current amount of annual burden is estimated to be 462,839 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 institutions and the customer.

The Federal Reserve requests comments from institutions, 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 (7100-0200), 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 205

Banks, banking, Consumer protection, Electronic fund transfers, Reporting and record keeping requirements.

#### Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation E. 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 E, 12 CFR part 205, as set forth below:

#### PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would continue to read as follows:

**Authority:** 15 U.S.C. 1693–1693r.

2. Section 205.4 is amended by redesignating paragraph (a) as paragraph (a)(1), adding a new paragraph (a)(2), and revising paragraph (c) to read as follows:

#### § 205.4 General disclosure requirements; jointly offered services.

(a) ►(1)◄ Form of disclosures. \* \* \*  
►(2) Foreign language disclosures. Disclosures may be made in languages other than English, provided they are available in English upon request.◄

\* \* \* \* \*  
►(c) Electronic communication. (1) *Definition. Electronic communication* means a message transmitted electronically between a financial institution and a consumer in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between financial institution and consumer.* (i) *General.* Except as provided in paragraph(c)(2)(ii) of this section, a financial institution that has complied with paragraph (c)(3) of this section may provide by electronic communication any information required by this regulation to be in writing.

(ii) *In-person exception.* When a consumer contracts for an electronic fund transfer service in person, the disclosures required under § 205.7 shall

be provided in paper form, unless the consumer requested the service by electronic communication and disclosures were provided in compliance with paragraph (c)(3)(i) and (c)(3)(ii) of this section at or around that time.

(3) *Disclosure notice.* The disclosure notice required by this paragraph shall be provided in a manner substantially similar to the applicable model form set forth in Appendix A of this part (Model Forms A–6 and A–7).

(i) *Notice by financial institution.* A financial institution shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the electronic fund transfer service 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 institution'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 financial institution shall provide a means for the consumer to accept or reject electronic disclosures.

(iii) *Changes.* (A) A financial institution shall notify affected consumers of any change to the information provided in the notice required by paragraph (c)(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 institution's option, an address for questions about receiving electronic disclosures.

(B) In addition to the notice under paragraph (c)(3)(iii)(A) of this section, if the change involves providing additional disclosures by electronic communication, a financial institution shall provide the notice in paragraph (c)(3)(i) of this section and obtain the consumer's consent. A notice is not required under paragraph (c)(3)(i) of this section if the institution'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 financial institution that uses electronic communication to provide information required by this Regulation E (12 CFR Part 205) shall:

(i) Send the information to the consumer'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 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 (c)(4) shall identify the account involved, shall be sent to an electronic address designated by the consumer (or to a postal address, at the financial institution's option), and shall be substantially similar to the model form set forth in Appendix A of this part (Model Form A–8).

(5) *Consumer use of electronic communication.* (i) *General.* A consumer may use electronic communication to assert any right under § 205.10(c) and § 205.11 if the consumer has consented to receive information required by this regulation by electronic communication, except when the consumer consented to receive only the disclosures required under § 205.7 by electronic communication.

(ii) *Institution's designation of address.* A financial institution may designate the electronic address or location that consumers must use if they send electronic communication under this paragraph.◄

3. Appendix A to Part 205 is amended by:

a. Revising the table of contents at the beginning of the appendix;

b. Revising Appendices A–3 and A–5; and

c. Adding new Appendices A–6, A–7, A–8, A–9, and A–10.

The revisions and additions read as follows:

#### Appendix A to Part 205—Model Disclosure Clauses and Forms

- A–1—Model Clauses for Unsolicited Issuance (§ 205.5(b)(2))
- A–2—Model Clauses for Initial Disclosures (§ 205.7(b))
- A–3—Model Forms for Error-Resolution Notice (§§ 205.7(b)(10) and 205.8(b))
- A–4—Model Form for Service-Providing Institutions (§ 205.14(b)(1)(ii))
- A–5—Model Forms for Government Agencies (§ 205.15(d)(1) and (2))

►A-6—Model Disclosures for Electronic Communication (§ 205.4(c)(3)) (Disclosures Available in Paper or Electronically)

A-7—Model Disclosures for Electronic Communication (§ 205.4(c)(3)) (Disclosures Available Only Electronically)

A-8—Model Notice for Delivery of Information Posted at Certain Locations (§ 205.4(c)(4))

A-9—Sample Form for Electronic Communication (§ 205.4(c)(3)) (Disclosures Available in Paper or Electronically)

A-10—Sample Form for Electronic Communication (§ 205.4(c)(3)) (Disclosures Available Only Electronically) ◀

\* \* \* \* \*

### A-3—MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) and 205.8(b))

(a) *Initial and annual error resolution notice* §§ 205.7(b)(10) and 205.8(b)). In case of errors or questions about your electronic transfers telephone us at [insert telephone number] or write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

►For errors involving new accounts, point-of-sale, and foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error. ◀

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

\* \* \* \* \*

### A-5—MODEL FORMS FOR GOVERNMENT AGENCIES (§ 205.15(d)(1) AND (2))

(1) *Disclosure by government agencies of information about obtaining account balances and account histories* § 205.15(d)(1)(i) and (ii). You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)] [when you make a balance inquiry at an ATM] [when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

(2) *Disclosure of error resolution procedures for government agencies that do not provide periodic statements* § 205.15(d)(1)(iii) and (d)(2)). In case of errors or questions about your electronic transfers telephone us at [telephone number] or write us at [address] as soon as you can, if you think an error has occurred in your [EBT] [agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing.

[We will generally complete our investigation within 10 business days and correct any error promptly.]

►We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, and foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error. ◀ [In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days.] If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account during the investigation.

[For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.]

If we decide that there was no error, we will send you a written explanation within three business days after we finish our

investigation. You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number] [the telephone number shown above].

### ►A-6—MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 205.4(c)(3)) (Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Electronic Fund Transfer 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: (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).]

- 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).

### A-7—MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 205.4(c)(3)) (Disclosures Available Only Electronically)

You will receive important information required by the Electronic Fund Transfer 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 electronic fund transfer service 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: (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).】

- 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 electronic fund transfer service 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).

**A-8—MODEL NOTICE FOR DELIVERY OF INFORMATION POSTED AT CERTAIN LOCATIONS (§ 205.4(c)(4))**

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.

BILLING CODE 6210-01-P

**A-9 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 205.4(c)(3))**

(Disclosures Available in Paper or Electronically)

**You can choose to receive important information required by the  
Electronic Fund Transfer 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: Terms and Conditions of our Electronic Banking Service, monthly statements, and change-in-terms notices.
- 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*.

**A-10 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 205.4(c)(3))**

(Disclosures Available Only Electronically)

**You will receive important information required by the  
Electronic Fund Transfer Act electronically.**

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

- The following information will be provided electronically: Terms and Conditions of our Electronic Banking Service, monthly statements, and change-in-terms notices.
- This electronic fund transfer service is available only if you accept these disclosures electronically.
- 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-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
- Do you want this electronic fund transfer service 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-xxxx or by electronic mail at \_\_\_\_\_.help@isp.com. ◀

4. In Supplement I to Part 205, under *Section 205.4—General Disclosure Requirements; Jointly Offered Services*, the following amendments are made:

a. Under paragraph 4(a) *Form of Disclosures*, paragraph 2. is removed; and

b. A new paragraph 4(c) *Electronic Communication* is added.

The additions read as follows:

**Supplement I To Part 205—Official Staff Interpretations**

\* \* \* \* \*

**SECTION 205.4—GENERAL DISCLOSURE REQUIREMENTS; JOINTLY OFFERED SERVICES**

\* \* \* \* \*

► **4(c) *Electronic Communication***

**Paragraph 4(c)(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 financial institution that provides disclosures by facsimile should comply with the requirements for electronic communication unless the institution knows that the disclosures will be received in paper form.

**Paragraph 4(c)(2)—Electronic Communication between Financial Institution and Consumer**

1. *Disclosures provided on institution's equipment.* Institutions that control equipment providing electronic disclosures to consumers (for example, computer terminals in an institution'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 readily understandable format and in a form the consumer may keep. A financial institution 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 institution's website.

2. *Retainability.* Institutions must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with financial institutions 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 EFTA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the institution also must send them to the consumer's designated electronic mail address or to another location, for example, on the institution's website, where the information may be retrieved at a later date.

3. *Timing and delivery.* When a consumer signs up for and is able to use an EFT service on the Internet, for example, in order to meet the timing and delivery requirements,

institutions 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 sign up for and use an EFT service before receiving the disclosures. For example, an institution 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 completing the sign-up process or using the EFT service.

**Paragraph 4(c)(2)(ii)—In-person Exception**

1. *Initial disclosures in paper form.* If a consumer contracts for an EFT service in person the financial institution generally must provide initial disclosures in paper form. For example, if a consumer visits a financial institution's branch office to sign up for an ATM card while opening an account, initial disclosures are required before the consumer contracts for the service or before the first transaction and they must be provided in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. If, however, a consumer makes a request on the Internet to open an account and obtain an ATM card, a financial institution may send disclosures electronically at or around that time even though the financial institution's procedures require the consumer to visit a branch office at a later time to complete the agreement (for example, to execute a signature card).

**Paragraph 4(c)(3)—Disclosure Notice**

1. *Consumer's affirmative responses.* Even though a consumer accepts electronic disclosures in accordance with § 205.4(c)(3)(ii), a financial institution 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 A-9 and A-10) in appendix A to this part.

**Paragraph 4(c)(3)(i)—Notice by Financial Institution**

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 institution's dialing area. Alternatively, a financial institution may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. *Institution's address.* Financial institutions have the option of providing either an electronic or postal address for consumers' use in addition to a 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 institution must inform consumers whether the EFT service is also available with disclosures in paper form.

**Paragraph 4(c)(3)(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. Paragraph 4(c)(3)(iii)—Changes

1. *Examples.* Examples of changes include a change in technical requirements, such as upgrades to computer software affecting the institution'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.* An institution meets the delivery requirements if the notice of a 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 institution's website, the same electronic address may 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 § 205.4(c)(3)(i), but provided a postal address to receive periodic statements in paper form.

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

5. *Institution's address.* See comment 4(c)(3)(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 institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures; in such cases, the institution must inform consumers whether the EFT service is also available with disclosures in paper form.

**Paragraph 4(c)(4)—Address or Location to Receive Electronic Communication**  
**Paragraph 4(c)(4)(i)**

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 financial institution.

**Paragraph 4(c)(4)(ii)**

1. *Identifying account involved.* A financial institution 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 financial institution may refer to "your checking account," or when the consumer has multiple accounts the institution may use a truncated account number.

2. *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 § 205.4(c)(4)(ii) is sent to the consumer, 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. 99-23139 Filed 9-13-99; 8:45 am]

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 213

[Regulation M; Docket No. R-1042]

#### Consumer Leasing

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

**ACTION:** Proposed rule.

**SUMMARY:** The Board is requesting comment on proposed revisions to Regulation M, which implements the Consumer Leasing Act. The Board previously published a proposed rule that permits lessors 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.

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

**ADDRESSES:** Comments, which should refer to Docket No. R-1042, 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:

Kyung H. Cho-Miller, Staff Attorney, or Jane Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667. Users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452-3544.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667-1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed \$25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act. The Board's Regulation M (12 CFR part 213) implements the act.

The CLA and Regulation M require disclosures to be provided to consumers in writing, presuming that lessors 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 CLA and Regulation M. 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