Section 226.7—Advertising

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7(b)(1) Amount Due at Lease Signing or Delivery

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[3. *Electronic advertisements.* For advertisements using electronic communication, to satisfy the prominence rule in § 213.7(b)(1), both the triggering terms and the required disclosures must appear in the same location so that they can be viewed simultaneously.]

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

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any other § 213.4 disclosure stated in the advertisement. [For advertisements using electronic communication, to comply with proximity rule in, both the rate and the accompanying notice must appear in the same location so that they can be viewed simultaneously. The prominent rule in § 213.7(b)(2) is not met if the disclosures can be viewed only by use of a link that connects the consumer to the information appearing at another location.]

7(c) Catalogs or Other Multipage Advertisements; Electronic Advertisements

* * * * *

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

►3. *Electronic form of disclosures.* For an advertisement that is accessed by the consumer in electronic form (such as an advertisement appearing on an Internet web site), the disclosures required under this section must be provided to the consumer in electronic form on or with the advertisement. Providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer views a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement. For example, if a consumer receives an advertisement in the mail, the creditor would *not* satisfy its obligation to provide the disclosures at that time by including a reference in the advertisement to the web site where the disclosures are located.◄

By order of the Board of Governors of the Federal Reserve System, April 20, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–7877 Filed 4–27–07; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1284]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for comments.

SUMMARY: The Board is proposing to amend Regulation Z, which implements the Truth in Lending Act, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the *Code of Federal Regulations* would reduce confusion about the status of the provisions and simplify the regulation. The Board is also proposing to amend Regulation Z to provide that when an application, solicitation, or advertisement is accessed by a consumer in electronic form, certain disclosures must be provided to the consumer in electronic form on or with the application, solicitation, or advertisement, and that in these circumstances the consumer consent and other provisions of the E-Sign Act do not apply. The proposal would also implement certain provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Similar rules are being proposed under other consumer fair lending and financial services regulations administered by the Board.

DATES: Comments must be received on or before June 29, 2007.

ADDRESSES: You may submit comments, identified by Docket No. R–1284, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

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

SUPPLEMENTARY INFORMATION:

I. Background

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

Board Proposals Regarding Electronic Disclosures

On May 2, 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit financial institutions to provide disclosures by sending them electronically (61 FR 19,696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14,528, March 25, 1998) and proposals under Regulations B (Equal

Credit Opportunity), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings) (63 FR 14,552, 14,538, 14,548, and 14,533, respectively, March 25, 1998).

Based on comments received on the 1998 proposals, in September 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49,688, 49,699, 49,713, 49,722 and 49,740, respectively, September 14, 1999). At the same time, the Board published an interim rule under Regulation DD allowing depository institutions to deliver disclosures on periodic statements in electronic form if the consumer agreed (64 FR 49,846, September 14, 1999). While these rulemakings were pending, Federal legislation was enacted addressing the use of electronic documents and records, including consumer disclosures.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed into law the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*). The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

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

The Interim Final Rules

On March 30, 2001, the Board published for comment interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation Z (66 FR 17,329). Similar interim final rules for Regulations B, E, M, and DD were published on March 30, 2001 (66 FR 17,322 (M)) and April 4, 2001 (66 FR 17,779 (B), 66 FR 17,786 (E), and 66 FR 17,795 (DD)). The interim final rules incorporated most of the provisions that were part of the 1999 proposals.

Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Creditors and other persons, as applicable, generally were required to obtain consumers' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act.

The 2001 interim final rule for Regulation Z established uniform requirements for the timing and delivery of electronic disclosures. Under the interim rule, disclosures could be sent to an e-mail address designated by the consumer, or could be made available at another location, such as an Internet Web site. If the disclosures were not sent by e-mail, creditors would have to provide a notice to consumers alerting them to the availability of the disclosures. Disclosures posted on a Web site would have to be available for at least 90 days to allow consumers adequate time to access and retain the information. Creditors also would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files. Similar provisions were included in the interim final rules adopted under Regulations B, E, M, and DD.

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

In August 2001, in response to comments received, the Board lifted the previously established October 1, 2001 mandatory compliance date for all of the interim final rules. (66 FR 41,439, August 8, 2001). Thus, institutions are not required to comply with the interim final rules. Since that time, the Board has not taken further action with respect to the interim final rules on electronic disclosures in order to allow electronic commerce, including electronic disclosure practices, to continue to develop without regulatory intervention and to allow the Board to gather further information about such practices.

II. The Proposed Rules

The Board is proposing to amend Regulation Z and the official staff commentary by (1) withdrawing portions of the 2001 interim final rule on electronic disclosures that restate or cross-reference provisions of the E-Sign Act and accordingly are unnecessary; (2) withdrawing other portions of the interim final rule that the Board now believes may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection; and (3) retaining the substance of certain provisions of the interim final rule that provide regulatory relief or guidance regarding electronic disclosures. (Similar amendments are also being proposed by the Board, in today's issue of the **Federal Register**, under Regulations B, E, M, and DD). In addition, the proposal would amend the regulation to implement certain provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act.

Because compliance with the 2001 interim final rules is not mandatory, removing most portions of the interim rules from the *Code of Federal Regulations*, while finalizing other provisions, would reduce confusion about the status of the electronic disclosure provisions and simplify the regulation. Certain provisions in the interim final rules, including provisions addressing foreign language disclosures, were not affected by the lifting of the mandatory compliance date and accordingly are now in final form; these provisions would not be deleted. The Board is also proposing to adopt certain provisions that are identical or similar to provisions in the 2001 interim final rules in order to enhance the ability of consumers to shop for credit online, minimize the information-gathering burdens on consumers, and provide guidance or eliminate a substantial burden on the use of electronic disclosures, as discussed further below. Finally, the Board is proposing to implement certain provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109–8, 119 Stat. 23 (the ''Bankruptcy Act''), that amend TILA and relate to electronic disclosures.

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

The 2001 interim final rule allowed creditors to provide certain disclosures to consumers electronically, without regard to the consumer consent or other provisions of the E-Sign Act, for disclosures provided on or with an application or solicitation (the ''shopping disclosures'') or an advertisement. The Board reasoned that these disclosures, which would be available to the general public while shopping for credit, did not ''relate to a transaction,'' which is a prerequisite for triggering the E-Sign consumer consent provisions, and thus were not subject to those provisions. Some commenters on the interim final rules did not agree with the Board's rationale. Upon further consideration, the Board does not believe it is necessary to determine whether or not these disclosures are related to a transaction. This proposal does not make such determinations.

Instead, pursuant to the Board's authority under section 105(a) of TILA, as well as under section 104(d) of the E-Sign Act,[1] the Board is proposing to specify the circumstances under which certain disclosures may be provided to a consumer in electronic form, rather than in writing as generally required by Regulation Z, without obtaining the consumer's consent under section 101(c) of the E-Sign Act. The proposed rule would also amend various sections of Regulation Z, discussed in detail below, to clarify that certain disclosures must be provided to the consumer in electronic form on or with an application, solicitation, or advertisement that is accessed by the consumer in electronic form.

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

At the same time, the Board recognizes that consumers who shop or apply for credit online may not want to receive other disclosures electronically. Therefore, with respect to, for example, account-opening disclosures, periodic statements, and change-in-terms notices, creditors would be required to provide written disclosures or obtain the consumer's consent in accordance with the E-Sign Act to provide such disclosures in electronic form.

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

The Board solicits comment on all aspects of this proposal. Specifically, the Board seeks comment on the appropriateness of eliminating certain provisions and retaining other provisions contained in the 2001 interim final rule.

III. Section-by-Section Analysis

12 CFR Part 226 (Regulation Z)

Subpart B Open-End Credit

Section 226.5 General Disclosure Requirements

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

Section 226.5(a)(1) would also be revised to provide that the open-end credit disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions of the E-Sign Act. The Board believes that, for an application, solicitation, or advertisement accessed by the consumer in electronic form, permitting creditors to provide credit and charge card application and solicitation disclosures, application disclosures for home equity lines of credit (HELOCs), and open-end credit advertising disclosures in electronic form without regard to the consumer consent and other provisions

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

of the E-Sign Act will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will facilitate shopping for credit by enabling consumers to receive important disclosures at the same time they access an application, solicitation, or advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to access an online application, solicitation, or advertisement, or complete an online application is potentially burdensome and could discourage consumers from shopping for credit online. Moreover, because these consumers are viewing the application, solicitation, or advertisement online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.

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

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

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(a) General Rules

Section 226.5a(a)(2) prescribes the form of disclosures required with credit and charge card applications and solicitations. The Board proposes to amend § 226.5a(a)(2) by adding a new paragraph (v) to provide that if a consumer accesses an application or solicitation for a credit or charge card in electronic form, the disclosures required on or with an application or solicitation for a credit or charge card must be provided to the consumer in electronic form on or with the application or solicitation. A consumer accesses an application or solicitation in electronic form when, for example, the consumer views the application or solicitation on his or her home computer. On the other hand, if a consumer receives an application or solicitation in the mail, the creditor would not satisfy its obligation to provide § 226.5a disclosures at that time by including a reference in the application or solicitation to the Web site where the disclosures are located. Comment 5a(a)(2)–9 would be added to clarify this point.

Comment 5a(a)(2)–8 of the 2001 interim final rule states that a consumer must be able to access the electronic disclosures at the time the application form or solicitation reply form is made available by electronic communication. The Board proposes to revise this comment to describe alternative methods for presenting electronic disclosures, which are examples rather than an exhaustive list. Comment 5a(a)(2)–2.ii., which was added in 2000, specifies how the tabular disclosures required by § 226.5a can be ''prominently located'' if provided on or with electronic applications and solicitations, and is similar to revised comment 5a(a)(2)–8. Revised comment 5a(a)(2)–8 reminds creditors that for disclosures required to be provided in tabular form, the electronic form of the table must satisfy the requirements of comment 5a(a)(2)–2.ii.

Section 1304 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109–8, 119 Stat. 23 (the ''Bankruptcy Act''), amends Section 127(c) of TILA to require that credit card application and solicitation disclosures provided ''using the Internet or other interactive computer service'' must be ''readily accessible to consumers in close proximity'' to the solicitation. 15 U.S.C. 1637(c)(7). In connection with the Board's ongoing review of Regulation Z, the Board issued an Advance Notice of Proposed Rulemaking (70 FR 60235, October 17, 2005) (October 2005 ANPR), soliciting comments on how these Bankruptcy Act amendments should be implemented.

The Bankruptcy Act provision applies to solicitations to open a card account ''using the Internet or other interactive computer service.'' The term ''Internet'' is defined as the international computer network of both Federal and non-Federal interoperable packet switched data networks. The term ''interactive computer service'' is defined as any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions. 15 U.S.C. 1637(c)(7). Based on the definitions of ''Internet'' and ''interactive computer service,'' the Board believes that Congress intended to cover all card offers that are provided to consumers in electronic form. In the October 2005 ANPR, the Board solicited comment on what guidance the Board should provide regarding when disclosures are ''readily accessible to consumers in close proximity'' to an application or solicitation that is made in electronic form. In particular, the Board asked whether additional or different guidance is needed from the guidance previously issued by the Board.

Most commenters stated that the Board should retain the existing guidance in comment 5a(a)(2)–2.ii on ''prominent location'' to interpret the ''close proximity'' standard. A few commenters stated that the 2000 guidance should not apply, and that, for example, it should suffice to provide a link to the disclosures that the consumer could choose to access or not. Some commenters urged the Board generally to allow maximum flexibility to creditors regarding the display of electronic disclosures, and stated that no guidance or specific rules were necessary.

The Board intends to interpret the Bankruptcy Act's ''close proximity'' standard in its ongoing review of the credit card provisions of Regulation Z. Based on comments received on the October 2005 ANPR, the Board is considering how to apply the ''close proximity'' standard to electronic applications and solicitations, including whether to retain the existing guidance in comment 5a(a)(2)–2.ii. The Board anticipates issuing a proposal addressing these and other Regulation Z issues within the next few months.

5a(b) Required Disclosures

5a(c) Direct-Mail and Electronic Applications and Solicitations

Section 226.5a(b)(1) sets forth rules for accuracy of the annual percentage rate (APR) disclosure in an application or solicitation for a variable-rate credit card plan. Section 226.5a(b)(1)(ii) provides, in part, that direct mail APR disclosures are accurate if the rate was in effect within 60 days before mailing the disclosures. The 2001 interim final rule added a new § 226.5a(b)(1)(iii) to provide that, in the case of electronic disclosures, the variable APR disclosure is considered accurate if the disclosed rate was in effect within 30 days before the disclosure was sent by electronic mail to a consumer or made available at another location, such as the card issuer's Internet Web site, and amended § 226.5a(b)(1)(ii) to reference the new section. Preparing revised electronic disclosures when the index rate for a variable APR changes should require less time than revising printed materials in preparation for a direct mail

campaign. Thus, specifying a shorter time frame for accuracy of electronic disclosures than for printed disclosures appeared reasonable. The 2001 interim final rule did not contain specific guidance on accuracy requirements for other disclosures provided electronically, such as fee disclosures.

Section 226.5a(c) requires that certain disclosures be included on or with a credit card application or solicitation that is sent to consumers by direct mail. The 2001 interim final rule revised § 226.5a(c) to apply the direct mail rules to applications and solicitations provided to consumers electronically.

More recently, section 1304 of the Bankruptcy Act amended Section 127(c) of TILA to require that solicitations to open a card account using the Internet or other interactive computer service must contain the same disclosures as those made for applications or solicitations sent by direct mail. Although this Bankruptcy Act provision refers to credit card solicitations (where no application is required), the Board requested comment in the October 2005 ANPR on whether the provision should be interpreted also to include applications provided electronically. Almost all commenters on this issue stated that there is no reason to treat electronic applications differently from electronic solicitations in applying the Bankruptcy Act provision. The Board concurs. With respect to both electronic applications and solicitations, it is important for consumers who are shopping for a card to receive accurate cost information about the card before submitting an electronic application or responding to an electronic solicitation. Thus, the Board proposes to use its authority in section 105(a) of TILA to apply the Bankruptcy Act provision relating to electronic offers to both electronic solicitations and applications, as necessary to effectuate the informed use of credit, a primary purpose of TILA. 15 U.S.C. 1601(a), 1604(a).

The Bankruptcy Act also provides that the disclosures for electronic credit card offers must be ''updated regularly to reflect the current policies, terms, and fee amounts.'' In the October 2005 ANPR, the Board solicited comment on how that standard should be implemented.

The majority of commenters to the October 2005 ANPR who addressed the accuracy of variable rates agreed that a 30-day standard would be appropriate to implement the ''updated regularly'' standard in the Bankruptcy Act. Some commenters advocated longer periods such as 60 days, or shorter periods such as daily or weekly updating, or suggested that the Board should not provide specific guidance or rules, instead allowing maximum flexibility in this area.

The Board proposes to revise §§ 226.5a(b)(1) and 226.5a(c) to make the direct-mail provision of § 226.5a applicable to electronic applications and solicitations and to implement the ''updated regularly'' standard in the Bankruptcy Act with regard to the accuracy of variable APRs. Current § 226.5a(c) would be revised and renumbered as new § 226.5a(c)(1). A new § 226.5a(c)(2) would be added to address the accuracy of a variable APR in direct mail solicitations. This new section would require issuers to update variable APRs disclosed on mailed applications and solicitations every 60 days and variable APRs disclosed on applications and solicitations provided in electronic form every 30 days, and to update other terms when they change. The Board believes the 30-day and 60-day accuracy requirements for variable APRs strike an appropriate balance between seeking to ensure consumers receive updated information and avoiding imposing undue burdens on creditors. The Board does not believe it is necessary for creditors to disclose to consumers the exact variable APR in effect on the date the application or solicitation is accessed by the consumer because consumers should understand that variable APRs are subject to change. Moreover, it could be costly and operationally burdensome for creditors to comply with a requirement to disclose the exact variable APR in effect at the time the application or solicitation is accessed. The obligation to update the other terms when they change ensures that consumers receive information that is reasonably accurate and current, and should not impose significant burdens on issuers. Based on discussions with industry concerning operational issues, the Board understands that issuers typically change other terms infrequently, perhaps once or twice a year.

Section 226.5a(c)(2) consists of two subsections. Section 226.5a(c)(2)(i) would provide that § 226.5a disclosures mailed to a consumer must be accurate as of the time the disclosures are mailed. This section would also provide that an accurate variable APR is one that is in effect within 60 days before mailing. Section 226.5a(c)(2)(ii) would provide that § 226.5a disclosures provided in electronic form (except for a variable APR) must be accurate as of the time they are sent to a consumer's e-mail address, or as of the time they are viewed by the public on a web site. For the reasons discussed above, this section would provide that a variable APR is accurate if it is in effect within 30 days before it is sent, or viewed by the public, as applicable. Presently, variable APRs on most credit cards may change on a monthly basis, so the Board believes the 30-day accuracy requirement for variable APRs is appropriate.

Many of the provisions included in proposed § 226.5a(c)(2) have been incorporated from § 226.5a(b)(1). To eliminate redundancy, the Board proposes to revise § 226.5a(b)(1) by deleting § 226.5a(b)(1)(ii) and (iii) and comment 5a(c)–1. The portion of § 226.5a(b)(1)(ii) that relates to the accuracy of APRs provided in ''take-ones'' would be incorporated in new § 226.5a(e)(5).

Section 226.5b Requirements for Home-Equity Plans

Section 226.5b(a) sets forth requirements for the form of disclosures required to be made on or with applications for HELOCs. The Board proposes to amend § 226.5b(a) by adding a new paragraph (3) to provide that if a consumer accesses a HELOC application in electronic form, the disclosures required on or with an application for a HELOC must be provided to the consumer in electronic form on or with the application. A consumer accesses a HELOC application in electronic form when, for example, the consumer views the application on his or her home computer. On the other hand, if a consumer receives a HELOC application in the mail, the creditor would *not* satisfy its obligation to provide § 226.5b disclosures at that time by including a reference in the application to the web site where the disclosures are located. Comment 5b(a)(3)–1 would be added to clarify this point.

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

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

comment 5a(a)(2)–8 of the 2001 interim final rule, discussed above.

The Board proposes to delete comment 5b(b)–7 and substitute a new comment 5b(a)(1)–5 in its place, which generally parallels the content of the revised comment 5a(a)(2)–8. The new comment would describe alternative methods for presenting electronic disclosures, which are examples rather than an exhaustive list. Comment 5b(a)(1)–5 would omit all references to reply forms to recognize that the HELOC disclosures are application disclosures. The renumbering of the comment reflects the Board's belief that the focus of this comment is the form of electronic disclosures, rather than the timing of those disclosures.

Section 226.15 Right of Rescission

Section 226.15 gives consumers the right to rescind certain open-end credit plans secured by their principal dwelling. Under § 226.15(b), creditors must provide two copies of a notice of this right to each consumer entitled to rescind. For written (paper) disclosures, this allows consumers to return one copy to the creditor if they exercise the right of rescission and retain the second copy. For rescission notices provided in electronic form, the 2001 interim final rule added language permitting creditors to provide only one copy of the electronic notice to each consumer when the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act. The Board proposes to retain this provision. It does not appear that consumers would benefit by receiving two electronic copies of rescission notices because a second electronic ''copy'' is unnecessary for purposes of consumer retention.

In the 2001 interim final rule, comment 15(b)–1 was revised to state that if there is more than one property owner, a single rescission notice may be sent to each consumer if electronic communication is used, that each co-owner must consent to electronic disclosures, and that each must designate an electronic (e-mail) address to be used for this purpose. The Board believes, as discussed above, that provisions requiring the use of e-mail are no longer appropriate; comment 15(b)–1 would be revised accordingly. The Board also proposes to delete the statement that each co-owner must consent to electronic disclosures.

Section 226.16 Advertising

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

Section 226.16(c) relates to catalogs and other multiple-page advertisements and to electronic advertisements. The Board proposes to add a new paragraph (3) to § 226.16(c) to clarify that if a consumer accesses an advertisement for open-end credit in electronic form, the disclosures required on or with the open-end credit advertisement must be provided to the consumer in electronic form on or with the advertisement. A consumer accesses an advertisement in electronic form when, for example, the consumer views the advertisement on his or her home computer. On the other hand, if a consumer receives a written advertisement in the mail, the creditor would *not* satisfy its obligation to provide § 226.16 disclosures at that time by including a reference in the advertisement to the web site where the disclosures are located. Comment 16(c)(3)–1 would be added to clarify this point.

Section 226.16(c) provides that in a catalog or other multiple-page advertisement, the required disclosures need not be shown on each page where a ''trigger term'' appears, as long as each such page includes a cross-reference to the page where the required disclosures appear. The 2001 interim final rule clarified that this multiple-page rule also applies to credit advertisements in electronic form. For example, if a ''trigger term'' appears on a particular web page, the additional disclosures may appear in a table or schedule on another web page and still be considered part of a single advertisement if there is a clear reference to the page or location where the table or schedule begins (which may be accomplished, for example, by including a link). The Board proposes to retain the rule (in § 226.16(c)(1) and (2)) allowing the use of links or other cross-references in electronic credit advertisements to provide guidance on how the advertising rules apply to Web sites.

The 2001 interim final rule revised comment 16(c)(1)–1 and added comment 16(c)(1)–2 to provide guidance on multiple-page advertisements in electronic form. Because the Board is proposing to retain the changes to § 226.16(c)(1) with minor wording changes, the Board is also proposing to retain comments 16(c)(1)–1 and 2 as revised by the 2001 interim final rule with corresponding wording changes.

Subpart C Closed-end Credit

Section 226.17 General Disclosure Requirements

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

Section 226.17(a)(1) would also be revised to provide that the closed-end credit disclosures required by §§ 226.19(b) and 226.24 may be provided to the consumer in electronic form, and that the disclosures required by § 226.17(g) may be made available to the consumer or to the public in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions of the E-Sign Act. The Board believes that, for an application or advertisement accessed by the consumer in electronic form, permitting creditors to provide disclosures relating to applications for adjustable-rate mortgage (ARM) loans secured by the consumer's principal dwelling (§ 226.19(b)) and closed-end credit advertising (§ 226.24) in electronic form, without regard to the consumer consent and other provisions of the E-Sign Act, will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will assist consumers in shopping for credit by enabling them to receive important disclosures at the same time they access an application or advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to access an online application or advertisement, or complete an online application is

potentially burdensome and could discourage consumers from shopping for credit online. Moreover, because these consumers are viewing the application or advertisement online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.

Section 227.17(g) applies where a creditor receives a request for credit by mail, telephone, or electronic communication without face-to-face or direct telephone solicitation. In these circumstances, the creditor may delay making the TILA disclosures for the credit transaction until the due date of the first payment, provided certain disclosures (specified in § 226.17(g)(1)–(5)) have been made available to the consumer or to the public generally (such as in a catalog or advertisement). For example, a retailer may mail catalogs to consumers, or provides advertising inserts in newspapers, containing information for ordering merchandise by telephone or mail. If a consumer calls the retailer, orders an item, and agrees to pay for the item by obtaining a closed-end extension of credit from the retailer, the TILA closed-end disclosures would normally be required to be provided to the consumer before the consummation of the transaction. Since this is impracticable where the transaction is consummated by telephone, however, § 226.17(g) permits the retailer to delay providing the specific disclosures for the transaction, as long as the disclosures in § 226.17(g)(1)–(5), for representative amounts or ranges of credit, are included in the catalog or newspaper insert.

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

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

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

Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions

Section 226.19(b) requires creditors to provide certain disclosures relating to ARM loans secured by the consumer's principal dwelling when an application form is provided to the consumer or before the consumer pays a nonrefundable fee, whichever is earlier. The Board proposes to amend § 226.19 by adding a new paragraph (c) to provide that if a consumer accesses a ARM application in electronic form, the disclosures required on or with an application for an ARM must be provided to the consumer in electronic form on or with the application. A consumer accesses an ARM application in electronic form when, for example, the consumer views the ARM application on his or her home computer. On the other hand, if a consumer receives an ARM application in the mail, the creditor would *not* satisfy its obligation to provide § 226.19 disclosures at that time by including a reference in the application to the web site where the disclosures are located. Comment 19(c)–1 would be added to clarify this point.

Comment 19(b)–2 of the 2001 interim final rule states that a consumer must be able to access the electronic disclosures at the time the blank application form for ARMs is made available by electronic communication. The Board proposes to revise comment 19(b)–2 in a manner substantially similar to proposed comment 5b(a)(1)–5, discussed above. The revised comment would describe alternative methods for presenting electronic disclosures, which are examples rather than an exhaustive list.

Section 226.23 Right of Rescission

Section 226.23 gives consumers the right to rescind certain closed-end mortgage loans secured by their principal dwelling. Under § 226.23(b), creditors must provide two copies of a notice of this right to each consumer entitled to rescind. For written (paper) disclosures, this allows consumers to return one copy to the creditor if they exercise the right of rescission and retain the second copy. For rescission notices provided in electronic form, the 2001 interim final rule added language permitting creditors to provide only one copy of the electronic notice to each consumer when the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act. The Board proposes to retain this provision. It does not appear that consumers would benefit by receiving two electronic copies of rescission notices because a second electronic ''copy'' is unnecessary for purposes of consumer retention.

In the 2001 interim final rule, comment 23(b)–1 was revised to state that if there is more than one property owner, a single rescission notice may be sent to each consumer if electronic communication is used, that each co-owner must consent to electronic disclosures, and that each must designate an electronic (e-mail) address to be used for this purpose. The Board believes, as discussed above, that provisions requiring the use of e-mail are no longer appropriate; comment 23(b)–1 would be revised accordingly.

The Board also proposes to delete the statement that each co-owner must consent to electronic disclosures. The proposed revisions are consistent with the proposed revisions to comment 15(b)–1, discussed above, which relates to rescission in the context of open-end credit.

Section 226.24 Advertising

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

Section 226.24(d) relates to catalogs and other multiple-page advertisements and to electronic advertisements. The Board is proposing to add a new paragraph (3) to § 226.24(d) (comparable to proposed new paragraph (3) to § 226.16(c) for open-end credit advertising) to clarify that if a consumer accesses an advertisement for closed-end credit in electronic form, the disclosures required on or with the closed-end credit advertisement must be provided to the consumer in electronic form on or with the advertisement. A consumer accesses an advertisement in electronic form when, for example, the consumer views the advertisement on his or her home computer. On the other hand, if a consumer receives a written advertisement in the mail, the creditor would *not* satisfy its obligation to provide § 226.24 disclosures at that time by including a reference in the advertisement to the web site where the disclosures are located. Comment 24(d)–5 would be added to clarify this point.

Section 226.24(d) provides that in a catalog or other multiple-page advertisement, the required disclosures need not be shown on each page where a ''trigger term'' appears, as long as each such page includes a cross-reference to the page where the required disclosures appear. As it did for open-end credit advertising, the 2001 interim final rule clarified that the multiple-page rule for closed-end credit advertising also applies to credit advertisements in electronic form. For example, if a ''trigger term'' appears on a particular Web page, the additional disclosures may appear in a table or schedule on another Web page and still be considered part of a single advertisement if there is a clear reference to the page or location where the table or schedule begins (which may be accomplished, for example, by including a link). The Board proposes to retain the rule (in § 226.24(d)(1) and (2)) allowing the use of links or other cross-references in electronic credit advertisements to provide guidance on how the advertising rules apply to Web sites.

The 2001 interim final rule revised comment 24(d)–2 and added comment 24(d)–4 to provide guidance on multiple-page advertisements in electronic form. Because the Board is proposing to retain the changes to § 226.24(d) with minor wording changes, the Board is also proposing to retain comments 24(d)–2 and 24(d)–4 as revised by the 2001 interim final rule with corresponding wording changes.

Section 226.24(b) permits creditors to state a simple annual rate of interest or periodic rate in addition to the APR, as long as the rate is stated in conjunction with, but not more conspicuously than, the APR. In the 2001 interim final rule, comment 24(b)–6 was added to state that in an advertisement using electronic communication, the consumer must be able to view both rates simultaneously, and that this requirement is not satisfied if the consumer can view the APR only by use of a link that takes the consumer to another Web location. The Board proposes to delete comment 24(b)–6 as unnecessary. The requirement to state the simple annual rate or periodic rate in conjunction with, and not more conspicuously than, the APR, applies to electronic advertisements no less than to advertisements in other media. Requiring the consumer to scroll to another part of the page, or access a link, in order to view the APR would likely not satisfy this requirement.

Subpart E Special Rules for Certain Home Mortgage Transactions

Section 226.31 General Rules

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

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

Subpart F Electronic Communication

Section 226.36 Requirements for Electronic Communication

Section 226.36 was added by the 2001 interim final rule to address the general requirements for electronic communications. The Board proposes to delete § 226.36 (which constitutes all of subpart F) from Regulation Z and the accompanying sections of the staff commentary.

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

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

Sections 226.36(d) and (e) address specific timing and delivery requirements for electronic disclosures under Regulation Z, such as the requirement to send disclosures to a consumer's e-mail address (or post the disclosures on a Web site and send a notice alerting the consumer to the disclosures). The Board no longer believes that these additional provisions

are necessary or appropriate. Electronic disclosures have evolved since 2001, as industry and consumers have gained experience with them. Although many institutions offer e-mail alert notices to consumers in connection with online services, some consumers may choose not to receive notifications by e-mail and the Board sees no reason to require e-mail alert notices in all cases. In addition, the Board has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and phishing that have become more pronounced since 2001.

With regard to the requirement to attempt to redeliver returned electronic disclosures, as the commenters noted, creditors would be required to search their files for an additional e-mail address to use, and might be required to use a postal mail address for redelivery if no additional e-mail address was available. The Board believes that both requirements would likely be unduly burdensome. In addition, the concerns that have been raised about the requirement to use e-mail for the initial delivery of a disclosure or notice apply equally to the use of e-mail for an attempted redelivery.

Under the proposed rule, the Board would not require creditors to maintain disclosures posted on a Web site for at least 90 days as provided in the 2001 interim final rule for several reasons. First, based on a review of industry practices, it appears that many institutions maintain disclosures posted on an Internet web site for several months, and, in a number of cases, for more than a year. For example, it appears that credit card issuers that offer online periodic statements to consumers typically make those statements available without charge for six months or longer in electronic form. This practice has developed even though Regulation Z does not currently require institutions to maintain disclosures for any specific period of time. Second, the Board believes that an appropriate time period consumers may want electronic disclosures to be available may vary depending upon the type of disclosure, and is reluctant to establish specific time periods depending on the disclosures. Nevertheless, while the Board is not proposing to require disclosures to be maintained on an Internet web site for any specific time period, the general requirements of Regulation Z continue to apply to electronic disclosures, such as the requirement to provide disclosures to consumers at certain specified times and in a form that the consumer may keep. Although these general requirements apply to electronic disclosures, the Board does not believe that the 90-day time period set out in § 226.36(d) of the 2001 interim final rule is needed to ensure that creditors satisfy these requirements when they provide electronic disclosures. The Board, however, will monitor creditors' electronic disclosure practices with regard to the ability of consumer to retain Regulation Z disclosures and will consider further regulatory action if it appears necessary.

The official staff commentary to § 226.36 of the interim final rule provides guidance on the provisions set forth in § 226.36 such as delivery of disclosures or alert notices by e-mail, redelivery if disclosures or a notice is returned undelivered, and retention of disclosures on a Web site for 90 days. As noted above, because the Board is proposing to delete § 226.36 (which constitutes all of subpart F) of the regulation, the Board also proposes to delete the accompanying provisions of the official staff commentary.

IV. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

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

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

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

3. *Other Federal rules.* The Board believes no Federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation Z.

4. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that may provide additional ways to reduce regulatory burden associated with this proposed rule.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR 226. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

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

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

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

As mentioned in the Preamble, § 226.5 would be revised to clarify the disclosure requirements in §§ 226.5a and 226.5b. The Federal Reserve estimates that 279 respondents would take approximately 8 hours per month to comply with the existing disclosure requirements in § 226.5a and estimates the annual burden to be 26,784 hours; and 632 respondents would take approximately 4.5 minutes per transaction to comply with the existing disclosure requirements in § 226.5b and estimates the annual burden to be 12,798 hours. Sections 226.17 and 226.19 would be revised to clarify the existing disclosure requirements in §§ 226.17(g) and 226.19(b). The Federal Reserve estimates that 1,172 respondents would take approximately 6.5 minutes per transaction to comply with the existing disclosure requirements in §§ 226.17(g) and 226.19(b), and estimates the annual burden to be 313,765 hours. Sections 226.5 and 226.17 would also be revised to clarify the disclosure requirements in §§ 226.16 and 226.24 respectively. The Federal Reserve estimates that 1,172 respondents would take approximately 25 minutes per transaction to comply with the existing disclosure requirements in § 226.16 and 226.24, and estimates the annual burden to be 2,442 hours, collectively. The Federal Reserve requests specific comment on whether the revisions in this proposed rule would change the burden on respondents.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

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

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation Z. New language is shown inside bold-faced arrows, while language that would be removed is set off with bold-faced brackets.

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

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart B—Open-End Credit

2. Section 226.5 would be amended by revising paragraph (a)(1) and removing paragraph (a)(5), to read as follows:

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing,[7] in a form

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

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

* * * * *

[(5) *Electronic communication.* For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see § 226.36.]

* * * * *

3. Section 226.5a would be amended by adding a new paragraph (a)(2)(v), removing paragraphs (b)(1)(ii) and (b)(1)(iii), revising paragraph (c), and adding new paragraph (e)(5), to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

* * * * *

(a) *General rules.* * * *

(2) *Form of disclosures.* * * *

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

(b) *Required disclosures.* * * *

(1) *Annual percentage rate.* * * *

[(ii) When variable rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable rate disclosures are provided under paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosures. Disclosures provided by electronic communication are subject to paragraph (b)(1)(iii) of this section.]

[(iii) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before mailing the disclosures to a consumer's electronic mail address. If disclosures are made available at another location such as the card issuer's Internet Web site, the annual percentage rate must be one in effect within the last 30 days.]

* * * * *

(c) *Direct-mail and electronic applications and solicitations.* ►(1) *General.*◄ The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers [or provided by electronic communication] ►or provided to consumers in electronic form◄.

►(2) *Accuracy.* (i) Disclosures in direct mail applications and solicitations must be accurate as of the time the disclosures are mailed. An accurate variable annual percentage rate is one in effect within 60 days before mailing.

(ii) Disclosures provided in electronic form must be accurate as of the time they are sent, in the case of disclosures sent to a consumer's electronic mail address, or as of the time they are viewed by the public, in the case of disclosures made available at a location such as a card issuer's Internet Web site. An accurate variable annual percentage rate provided in electronic form is one in effect within 30 days before it is sent to a consumer's electronic mail address, or viewed by the public, as applicable.◄

* * * * *

(e) *Applications and solicitations made available to general public.* * * *

►(5) *Accuracy.* The disclosures given pursuant to paragraph (e)(1) of this section must be accurate as of the date of printing. An accurate annual percentage rate is one in effect within 30 days before printing.◄

* * * * *

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

§ 226.5b Requirements for home equity plans.

* * * * *

(a) *Form of disclosures.* * * *

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

* * * * *

(c) *Duties of third parties.* [(1) *General.*] * * *

[(2) *Electronic communication.* Persons other than the creditor that are required to comply with paragraphs (d) and (e) of this section may use electronic communication in accordance with the requirements of § 226.36, as applicable.]

* * * * *

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

§ 226.15 Right of rescission.

* * * * *

(b) *Notice of right to rescind.* In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered ►in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act◄ [by electronic communication as provided in § 226.36(b)]). * * *

* * * * *

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

§ 226.16 Advertising.

* * * * *

(c) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an ►electronic◄ advertisement ►(such as an advertisement appearing on an Internet web site)◄ [using electronic communication], gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

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

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

(2) A catalog or other multiple-page advertisement or an ►electronic◄ advertisement ►(such as an advertisement appearing on an Internet Web site)◄ [using electronic communication] complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

[8] The disclosures required under § 226.5a for credit and charge card applications and solicitations, the home equity disclosures required under § 226.5b(d), the alternative summary billing rights statement provided for in § 226.9(a)(2), the credit and charge card renewal disclosures required under § 226.9(e), and the disclosures made under § 226.10(b) about payment requirements need not be in a form that the consumer can keep.

►(3) For an advertisement that is accessed by the consumer in electronic form, the disclosures required under this section must be provided to the consumer in electronic form on or with the advertisement.◄

* * * * *

Subpart C—Closed-End Credit

7. Section 226.17 would be amended by revising paragraph (a)(1), removing paragraph (a)(3), and revising paragraph (g) introductory text, to read as follows:

§ 226.17 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. ►The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 226.17(g), 226.19(b), and 226.24 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.◄ The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related [37] to the disclosures required under § 226.18.[38] The itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under that section.

* * * * *

[(3) *Electronic communication.* For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see § 226.36.**]**

* * * * *

(g) *Mail or telephone orders—delay in disclosures.* If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form ►or in electronic form◄ to the consumer or to the public before the actual purchase order or request:

* * * * *

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

§ 226.19 Certain residential mortgage and variable-rate transactions.

* * * * *

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

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

§ 226.23 Right of rescission.

* * * * *

(b)(1) *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered ►in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act◄ **[**by electronic communication as provided in § 226.36(b)**]**). * * *

* * * * *

10. Section 226.24 would be amended by revising paragraphs (d)(1) and (d)(2) and adding a new paragraph (d)(3), to read as follows:

§ 226.24 Advertising.

* * * * *

(d) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an ►electronic◄ advertisement ►(such as an advertisement appearing on an Internet Web site)◄ **[**using electronic communication**]**, gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (c)(2) of this section, it shall be considered a single advertisement if:

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

(ii) Any statement of terms of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an ►electronic◄ advertisement ►(such as an advertisement appearing on an Internet Web site)◄ **[**using electronic communication**]** complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

►(3) For an advertisement that is accessed by the consumer in electronic form, the disclosures required under this section must be provided to the consumer in electronic form on or with the advertisement.◄

Subpart E—Special Rules for Certain Home Mortgage Transactions

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

§ 226.31 General rules.

* * * * *

(b) *Form of disclosures.* **[**(1) *General.***]** The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. ►The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).◄

[(2) *Electronic communication.* For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see § 226.36.**]**

* * * * *

12. Subpart F to part 226 would be removed.

13. In Supplement I to part 226, the following amendments would be made:

a. In *Section 226.5—General Disclosure Requirements*, under *Paragraph 5(b)(2)(ii)*, paragraph 3. would be revised.

b. In *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(a)(2) Form of Disclosures*, paragraph 8. would be revised and new paragraph 9. would be added.

c. In *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(c) Direct Mail Applications or Solicitations*, the heading would be revised to read *5a(c) Direct Mail and Electronic Applications or Solicitations*, paragraph 1. would be removed, and paragraph 2. would be redesignated as paragraph 1.

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

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

d. In *Section 226.5b—Requirements for Home Equity Plans*, under *5b(a) Form of Disclosures*, under *Paragraph 5b(a)(1)*, new paragraph 5. would be added.

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

f. In *Section 226.5b—Requirements for Home Equity Plans*, under *5b(b) Time of Disclosures*, paragraph 7. would be removed.

g. In *Section 226.15—Right of Rescission*, under *15(b) Notice of Right to Rescind.*, paragraph 1. would be revised.

h. In *Section 226.16—Advertising*, under *Paragraph 16(c)(1)*, paragraphs 1. and 2. would be revised.

i. In *Section 226.16—Advertising*, new heading *Paragraph 16(c)(3)* and new paragraph 1. would be added.

j. In *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *19(b) Certain variable-rate transactions.*, paragraph 2.v. would be revised.

k. In *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, new heading *19(c) Electronic disclosures* and new paragraph 1. would be added.

l. In *Section 226.23—Right of Rescission*, under *23(b) Notice of Right to Rescind.*, paragraph 1. would be revised.

m. In *Section 226.24—Advertising*, under *24(b) Advertisement of Rate of Finance Charge*, paragraph 6. would be removed.

n. In *Section 226.24—Advertising*, under *24(d)*, paragraphs 2. and 4. would be revised, and new paragraph 5. would be added.

o. Subpart F would be removed.

The amendments read as follows:

Supplement I To Part 226—Official Staff Interpretations

* * * * *

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

* * * * *

5(b)(2) Periodic statements.

* * * * *

Paragraph 5(b)(2)(ii).

* * * * *

3. *Calling for periodic statements.* When the consumer initiates a request, the creditor may permit, but may not require, consumers to pick up their periodic statements. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement must be made available in accordance with the 14-day rule. [If the consumer wishes to receive the statement by electronic communication, the creditor must comply with the consumer consent requirements as provided in § 226.36(b).]

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General rules.

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

* * * * *

8. [*Timing of disclosures for*]► *Form of electronic disclosures provided on or with*◄ *electronic applications or solicitations.* ►Card issuers must provide the disclosures required by this section on or with a blank application or reply form that is made available to the consumer in electronic form, such as on a card issuer's Internet web site. Card issuers have flexibility in satisfying this requirement. For example, the disclosures could automatically appear on the screen when the application or reply form appears. Alternatively, the disclosures could be located on the same web ''page'' as the application or reply form without necessarily appearing on the initial screen, if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable. Or, card issuers could provide a link to the electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. Whatever method is used, a card issuer need not confirm that the consumer has read the disclosures. For disclosures required to be provided in tabular form, card issuers must satisfy the requirements with respect to electronic disclosures set forth in comment 5a(a)(2)–2(ii).◄ [In all cases, a consumer must be able to access the disclosures at the time the blank application or reply form is made available by electronic communication such as on a card issuer's Internet web site. Card issuers have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, card issuers may provide a link to electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A card issuer need not confirm that the consumer has read the disclosures.]

►9. *Form of disclosures.* If a consumer accesses an application or solicitation in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the application or solicitation; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer is provided with a paper application or solicitation, the required disclosures must be provided in paper form on or with the application or solicitation. For example, if a consumer receives an application or solicitation in the mail, the creditor would *not* satisfy its obligation to provide § 226.5a disclosures at that time by including a reference in the application or solicitation to the web site where the disclosures are located.◄

* * * * *

5a(c) Direct-Mail ►*and Electronic*◄ *Applications and Solicitations*

[1. *Accuracy.* In general, disclosures in direct mail applications and solicitations must be accurate as of the time of mailing. (An accurate variable annual percentage rate is one in effect within 60 days before mailing.)]

[2.] ►1.◄ *Mailed publications.* Applications or solicitations contained in generally available publications mailed to consumers (such as subscription magazines) are subject to the requirements applicable to ''take-ones'' in § 226.5a(e), rather than the direct mail requirements of § 226.5a(c). However, if a primary purpose of a card issuer's mailing is to offer credit or charge card accounts—for example, where a card issuer ''prescreens'' a list of potential cardholders using credit criteria, and then mails to the targeted group its catalog containing an application or a solicitation for a card account—the direct mail rules apply. In addition, a card issuer may use a single application form as a ''take-one'' (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of § 226.5a(c) even when the form is used as a ''take-one''—that is, by presenting the required § 226.5a disclosures in a tabular format. When used in a direct mailing, the credit term disclosures must be accurate as of the mailing date whether or not the § 226.5a(e)(1) (ii) and (iii) disclosures are included; when used in a take-one, the disclosures must be accurate for as long as the take-one forms remain available to the public if the § 226.5a(e)(1) (ii) and (iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date)

* * * * *

Section 226.5b—Requirements for Home Equity Plans

* * * * *

5b(a) Form of disclosures.

5b(a)(1) General.

* * * * *

►5. *Form of electronic disclosures provided on or with electronic applications.* Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. For example, the disclosures could automatically appear on the screen when the application appears. Alternatively, the disclosures could be located on the same Web ''page'' as the application without necessarily appearing on the initial screen, if the application contains a clear and conspicuous reference to the

location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable. Or, creditors could instead provide a link to the electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application. Whatever method is used, a creditor need not confirm that the consumer has read the disclosures or brochure.◄

* * * * *

►*Paragraph 5b(a)(3).*

1. *Form of disclosures.* If a consumer accesses an application in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the application; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer is provided with a paper application, the required disclosures must be provided in paper form on or with the application. For example, if a consumer receives an application in the mail, the creditor would not satisfy its obligation to provide § 226.5b disclosures at that time by including a reference in the application to the Web site where the disclosures are located.◄

5b(b) Time of disclosures.

* * * * *

[7. *Applications available by electronic communication.* In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application or reply form is made available by electronic communication, such as on a creditor's Internet web site. Creditors have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer the consumer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, creditors may provide a link to electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A creditor need not confirm that the consumer has read the disclosures or brochure.**]**

* * * * *

Section 226.15—Right of Rescission

* * * * *

15(b) Notice of right to rescind.

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

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

In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice ►(one copy if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act)◄ and one copy of the disclosures. **[**If e-mail is used, the creditor complies with § 226.15(b)(1) if one notice is sent to each co-owner. Each co-owner must consent to receive electronic disclosures and each must designate an electronic address for receiving the disclosure.**]**

* * * * *

Section 226.16—Advertising

* * * * *

16(c) Catalogs or other multiple-page advertisements; electronic advertisements.

* * * * *

Paragraph 16(c)(1).

1. *General.* Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or an electronic advertisement ►(such as an advertisement appearing on an Internet Web site)◄. The rule applies only if the advertisement contains one or more of the triggering terms from § 226.16(b).

2. *Electronic* ►*advertisement*◄ **[***communication***]**. If an ►electronic advertisement (such as an advertisement appearing on an Internet Web site)◄ **[**advertisement using electronic communication**]** contains the table or schedule permitted under § 226.16(c)(1), any statement of terms set forth in § 226.6 appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.

* * * * *

►*Paragraph 16(c)(3).*

1. *Form of disclosures.* If a consumer accesses an advertisement in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the advertisement; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer views a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement. For example, if a consumer receives an advertisement in the mail, the creditor would *not* satisfy its obligation to provide § 226.16 disclosures at that time by including a reference in the advertisement to the Web site where the disclosures are located.◄

* * * * *

Subpart C—Closed-End Credit

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain variable-rate transactions.

* * * * *

2. *Timing.* * * *

v. **[***Electronic applications.***]** ►*Form of electronic disclosures provided on or with electronic applications.* Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. For example, the disclosures could automatically appear on the screen when the application appears. Alternatively, the disclosures could be located on the same Web ''page'' as the application without necessarily appearing on the initial screen, if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable. Or, creditors could instead provide a link to the electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application. Whatever method is used, a creditor need not confirm that the consumer has read the disclosures or brochure.◄

[In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application form is made available by electronic communication, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. For example, if a link is not used, the application form must clearly and conspicuously refer the consumer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, creditors may provide a link to electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application form. Or the disclosures could automatically appear on the screen when the application form appears. A creditor need not confirm that the consumer has read the disclosures or brochure.**]**

* * * * *

►*19(c) Electronic disclosures.*

1. *Form of disclosures.* If a consumer accesses an ARM application in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the application; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer is provided with a paper ARM application, the required disclosures must be provided in paper form on or with the application. For example, if a consumer receives an application in the mail, the creditor would *not* satisfy its obligation to provide the ARM disclosures at that time by including a reference in the application to the Web site where the disclosures are located.◄

* * * * *

Section 226.23—Right of Rescission

* * * * *

23(b) Notice of right to rescind.

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

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

In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice ►(one copy if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act)◄ and one copy of the disclosures. **[**If e-mail is used, the creditor complies with § 226.23(b)(1) if one notice is sent to each co-owner. Each co-owner must consent to receive electronic

disclosures and each must designate an electronic address for receiving the disclosure.]

* * * * *

Section 226.24—Advertising

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24(b) Advertisement of rate of finance charge.

* * * * *

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

* * * * *

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

* * * * *

2. *General.* Section 226.24(d) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement, or in an electronic advertisement ►(such as an advertisement appearing on an Internet Web site)◄. The rule applies only if the advertisement contains one or more of the triggering terms from § 226.24(c)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under § 226.24(c)(2) and so is not covered by § 226.24(d).

* * * * *

4. *Electronic* ► *advertisement*◄ [*communication*]. If an ►electronic advertisement (such as an advertisement appearing on an Internet Web site)◄ [advertisement using electronic communication] contains the table or schedule permitted under § 226.24(d)(1), any statement of terms set forth in § 226.24(c)(1) appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information [(but see comment 24(b)–6)].

►5. *Form of disclosures.* If a consumer accesses an advertisement in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the advertisement; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer views a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement. For example, if a consumer receives an advertisement in the mail, the creditor would not satisfy its obligation to provide § 226.16 disclosures at that time by including a reference in the advertisement to the Web site where the disclosures are located.◄

By order of the Board of Governors of the Federal Reserve System, April 20, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–7878 Filed 4–27–07; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1285]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for comments.

SUMMARY: The Board is proposing to amend Regulation DD, which implements the Truth in Savings Act, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the *Code of Federal Regulations* would reduce confusion about the status of the provisions and simplify the regulation. The Board is also proposing to amend Regulation DD to provide that certain disclosures may be provided to a consumer in electronic form without regard to the consumer consent and other provisions of the E-Sign Act; and that, when an advertisement is accessed by the consumer in electronic form, the disclosures must be provided in electronic form on or with the advertisement. Similar rules are being proposed under other consumer fair lending and financial services regulations administered by the Board.

DATES: Comments must be received on or before June 29, 2007.

ADDRESSES: You may submit comments, identified by Docket No. R–1285, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

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

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is to enable consumers to make informed decisions about accounts at depository institutions. The act requires depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, when changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. The Board's Regulation DD (12 CFR part 230) implements the act. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration. TISA and Regulation DD require a number of disclosures to be provided in writing.

Board Proposals Regarding Electronic Disclosures

On May 2, 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14528, March 25, 1998) and proposals under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings) (63 FR 14552, 14538, 14548, and 14533, respectively, March 25, 1998).