[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 N. Ambassador Drive, Kansas City, Missouri 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW, STOP 3630, Washington, D.C. 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor ''Parboiled Light'' rice.

[3] Fees for other services not referenced in table 2 will be based on the noncontract hourly rate listed in § 868.90, table 1.

Dated: March 28, 2001.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–8146 Filed 4–3–01; 8:45 am]

BILLING CODE 3410–EN–P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1040]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; request for comments.

SUMMARY: The Board is adopting an interim final rule amending Regulation B, which implements the Equal Credit Opportunity Act, to establish uniform standards for the electronic delivery of disclosures required by the act and regulation. The rule provides guidance on the timing and delivery of electronic disclosures to ensure that applicants have adequate opportunity to access and retain required information. (Similar rules are being adopted under other consumer financial services regulations administered by the Board.) Under the rule, creditors may deliver disclosures electronically if they obtain applicants' affirmative consent in accordance with the Electronic Signatures in Global and National Commerce Act. In addition, the regulation is revised to allow creditors to provide disclosures in foreign languages. The rule is being adopted as an interim rule to allow for additional public comment.

DATES: The interim rule is effective March 30, 2001; however, to allow time for any necessary operational changes, the mandatory compliance date is October 1, 2001. Comments must be received by June 1, 2001.

ADDRESSES: Comments, which should refer to Docket No. R–1040, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 or mailed electronically to *regs.comments@federalreserve.gov.* Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 in the Board's Martin Building between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor or John C. Wood, Counsel, or Minh–Duc Le, Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667.

SUPPLEMENTARY INFORMATION:

I. Background

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

The ECOA and Regulation B require that some disclosures be provided in writing, presuming that creditors provide paper documents. Under the Electronic Signatures in Global and National Commerce Act (E-Sign Act), however, electronic documents and signatures have the same validity as paper documents and handwritten signatures.

Board Proposals Regarding Electronic Disclosures

Over the past few years, the Board has published several interim rules and proposals regarding the electronic delivery of disclosures. In 1996, after a comprehensive review of Regulation E (Electronic Fund Transfers), the Board proposed to amend the regulation to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696, May 2, 1996). Based on comments received on the 1996 proposal, on March 25, 1998, the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14528) and similar proposals under Regulation B (63 FR 14552) and other financial services regulations administered by the Board. The 1998 interim rule and proposed rules were similar to the 1996 proposed rule under Regulation E.

The 1998 proposals and interim rule allowed depository institutions, creditors, lessors, and others to provide disclosures electronically if the consumer agreed, with few other requirements. For ease of reference, this background section uses the terms ''institutions'' and ''consumers.''

Industry commenters generally supported the Board's 1998 proposals and interim rule, but many of them sought specific revisions and additional guidance on how to comply with the disclosure requirements in certain transactions and circumstances. In particular, they expressed concern that the rule did not specify a uniform method for establishing that an ''agreement'' was reached for sending disclosures electronically. Consumer advocates, on the other hand, generally opposed the 1998 proposals and the interim rule. They believed that consumer protections in the proposals were inadequate, especially in connection with transactions that are typically consummated in person (such as automobile loans and leases, home-secured loans, and door-to-door credit sales).

September 1999 Proposals

In response to comments received on the 1998 proposals, the Board published revised regulatory proposals in September 1999 under Regulations B, E, M, Z, and DD (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999) (collectively, the ''1999 proposals''), and an interim rule under Regulation DD (64 FR 49846). The interim rule under Regulation DD allowed depository institutions to deliver disclosures on periodic statements electronically if the consumer agrees.

Generally, the 1999 proposals required institutions to use a standardized form containing specific information about the electronic delivery of disclosures so that consumers could make informed decisions about whether to receive disclosures electronically. If the

consumer affirmatively consented, most disclosures could be provided electronically. To address concerns about potential abuses, the 1999 proposals generally would have required disclosures to be given in paper form when consumers transacted business in person. The proposals contained rules for disclosures that are made available to consumers at an institution's Internet web site (governing, for example, how long disclosures must remain posted at a web site).

Comments on the September 1999 proposals—The Board received letters representing 115 commenters expressing views on the revised proposals. Industry commenters generally supported the Board s approach of establishing federal rules for a uniform method of obtaining consumers consent to the receipt of electronic disclosures instead of deferring to state law. Still, many sought specific additional guidance and in some cases wanted more flexibility. They were concerned about the length of time the proposals would have required electronic disclosures to remain available to a consumer at an institution's Internet web site or upon request. In addition, they believed the proposed rule requiring paper disclosures for mortgage loans closed in person was not sufficiently flexible. Consumer advocates believed the 1999 proposals addressed many of their concerns about the 1998 proposals. Nevertheless, they urged the Board to incorporate greater protections for consumers, such as restricting the delivery of electronic disclosures to only those consumers who initiate transactions electronically.

The Board also obtained views through four focus groups with individual consumers, conducted in the Washington–Baltimore metropolitan area. Participants reviewed and commented on the format and content of the proposed sample consent forms, as well as on alternative revised forms.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed the E-Sign Act, which was enacted to encourage the continued expansion of electronic commerce. The E-Sign Act generally provides that electronic documents and signatures have the same validity as paper documents and handwritten signatures. The act contains special rules for the use of electronic disclosures in consumer transactions. Consumer disclosures may be provided in electronic form only if the consumer affirmatively consents after receiving certain information specified in the statute.

The Board and other government agencies are permitted to interpret the E-Sign Act's consumer consent requirements within prescribed limits, but may not impose additional requirements for consumer consent. In addition, agencies generally may not re-impose a requirement for using paper disclosures in particular transactions, such as those conducted in person.

The consumer consent provisions in the E-Sign Act became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to use electronic disclosures under Regulations B, E, M, Z and DD if the consumer affirmatively consents in the manner required by section 101(c) of the E-Sign Act. Under section 101(c)(5) of the E-Sign Act, consumers who consented prior to the effective date of the act to receive electronic disclosures as permitted by any law or regulation, are not subject to the consent requirements.

II. The Interim Rule

The Board is adopting an interim final rule to establish uniform standards for the electronic delivery of disclosures required under Regulation B. Consistent with the requirements of the E-Sign Act, creditors generally must obtain applicants' affirmative consent to provide disclosures electronically.

The interim rules also establish uniform requirements for the timing and delivery of electronic disclosures. Disclosures may be sent by e-mail to an electronic address designated by the applicant, or they may be made available at another location, such as an Internet web site. If the disclosures are not sent by e-mail, applicants must receive a notice alerting them to the availability of the disclosures. Disclosures posted on a web site must be available for at least 90 days, to allow applicants adequate time to access and retain the information. With regard to the timing of electronic disclosures, for disclosures that must be provided at application, applicants are required to access the disclosures before submitting the application. Under the interim rule, creditors must make a good faith attempt to redeliver electronic disclosures that are returned undelivered, using the address information available in their files. Similar rules are being adopted under Regulations E, M, Z, and DD.

III. Request for Comment

The interim rules include most of the revisions that were part of the 1999 proposals and were not affected by the E-Sign Act. The Board is adopting these rules with some minor changes discussed below. The rules are adopted as interim rules, to allow commenters to present new information or views not previously considered in the context of the 1998 and 1999 proposals. Since the Board's 1999 proposals were issued, more institutions have gained experience in offering financial services electronically. The Board believes that additional comments, beyond those previously considered in connection with the Board's earlier proposals, might inform the Board whether any developments in technology or industry practices have occurred that warrant further changes in the rules. The comment period ends on June 1, 2001. The Board expects to adopt final rules on a permanent basis prior to October 1, 2001.

Interpreting E-Sign Provisions

Under section 104(b) of the E-Sign Act, the Board and other government agencies are permitted to interpret the act, within prescribed limits. The Board may issue rules that interpret how the E-Sign Act's consumer consent requirements apply for purposes of the laws administered by the Board. Also, the Board may, by regulation, exempt a particular category of disclosures from the E-Sign Act's consumer consent requirements if it will eliminate a substantial burden on electronic commerce without creating material risk for consumers.

The Board requests comment on whether the Board should exercise its authority under the E-Sign Act in future rulemakings to interpret the consumer consent provisions or other provisions of the act, as they affect the Board's consumer protection regulations. Comment is requested on whether the statutory provisions relating to consumer consent are sufficient, or whether additional guidance is needed. For example, is interpretative guidance needed concerning the statutory requirement that applicants confirm their consent electronically in a manner that reasonably demonstrates they can access information in the form to be used by the creditor? Is clarification needed on the effect of applicants withdrawing their consent, or on requesting paper copies of electronic disclosures? Creditors must also inform applicants of changes in hardware or software requirements if the change creates a material risk that the applicant

will not be able to access or retain the disclosure. The Board solicits comment on whether regulatory standards are needed for determining a ''material risk'' for purposes of Regulation B and financial services laws administered by the Board, and if so what standards should apply.

Under section 104(d) of the E-Sign Act, the Board is authorized to exempt specific disclosures from the consumer consent requirements of section 101(c) of the E-Sign Act, if the exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. The Board requests comment on whether it should consider exercising this exemption authority.

Study on Adapting Requirements to Online Banking and Lending

The E-Sign Act eliminated legal impediments to the use of electronic records and signatures. The Board requests comment on whether other legislative or regulatory changes are needed to adapt current requirements to online banking and lending and facilitate electronic delivery of consumer financial services.

The comments may assist the Board in future efforts to update the regulations. The comments may also be used in connection with a study required under the Gramm-Leach-Bliley Act of 1999. That act requires the federal bank supervisory agencies to conduct a study of banking regulations that affect the electronic delivery of financial services and to submit to the Congress a report recommending any legislative changes that are needed to facilitate online banking and lending.

IV. Section-by-Section Analysis

Pursuant to its authority under section 703 of the ECOA, the Board amends Regulation B to establish uniform standards for the use of electronic communication to provide disclosures required by this regulation. Electronic disclosures can effectively reduce compliance costs without adversely affecting consumer protections. To the extent that a creditor may make electronic disclosures available at its Internet web site instead of providing the disclosures directly to the applicant, the Board finds that such an exception is warranted, acting pursuant to its authority under section 703(a)(1) of the ECOA. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to changes in the official staff commentary.

Section 202.4 General Rules

4(b) Foreign Language Disclosures

To provide consistency among the regulations, as proposed, § 202.4(b) permits creditors to provide disclosures in languages other than English as long as disclosures in English are available to applicants who request them.

Section 202.9 Notifications

9(h) Duties of Third Parties

Under § 202.9(g), when an application for credit is submitted through a third party to more than one creditor and no credit is offered (or the applicant does not expressly accept or use any credit offered) each creditor taking adverse action must provide the notice required by § 202.9(a), but may do so through a third party. Third parties may use electronic communication to provide required disclosures, provided the requirements of § 202.17 are satisfied. This guidance is provided in new § 202.9(h).

Section 202.17 Requirements for Electronic Communication

17(a) Definition

As adopted, the definition of the term ''electronic communication'' remains substantially unchanged from the 1999 proposals. Section 202.17(a) limits the term to a message transmitted electronically that can be displayed on equipment as visual text; an example is a message displayed on a personal computer monitor screen. Thus, audio- and voice-response telephone systems are not included. Creditors that accommodate vision-impaired applicants by providing disclosures that do not use visual text must also provide disclosures using visual text.

Some commenters asked for clarification that the definition was not intended to preclude the use of devices other than personal computers, which also can display visual text. The equipment on which the text message is received is not limited to a personal computer, provided the visual display used to deliver the disclosures meets the ''clear and conspicuous'' format requirement, discussed below.

17(b) General Rule

Effective October 1, 2000, the E-Sign Act permits creditors to provide disclosures using electronic communication, if the creditor complies with the consumer consent requirements in section 101(c). Under section 101(c) of the E-Sign Act, creditors must provide specific information about the electronic delivery of disclosures before obtaining the consumer's affirmative consent to receive electronic disclosures. The consent requirements in the E-Sign Act are similar but not identical to the Board's 1999 proposal. Section 202.17(b) sets forth the general rule that creditors subject to Regulation B may provide disclosures electronically if the creditor complies with section 101(c) of the E-Sign Act. Pursuant to the Board's authority under section 703(a) of the ECOA, § 202.17(b) applies to consumer and business credit applicants.

The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under the ECOA other than a requirement that disclosures be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing and retainability rules and the clear and conspicuous standard. Comment 17(b)–1 contains this guidance.

Presenting Disclosures in a Clear and Conspicuous Format

The interim final rule imposes a new clear and conspicuous standard for electronic disclosures under Regulation B. See § 202.17(b). (As part of a comprehensive review of Regulation B, the Board proposed in August 1999 to apply the standard to all disclosures required to be in writing (64 FR 44581, August 16, 1999).) Commenters generally supported the standard; most believed a consistent standard should apply to all of the regulations.

A creditor must provide electronic disclosures using a clear and conspicuous format. Also, in accordance with the E-Sign Act: (1) The creditor must disclose the requirements for accessing and retaining disclosures in that format; (2) the applicant must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and (3) the applicant must provide the disclosures in accordance with the specified requirements. Comment 17(b)–2 contains this guidance.

Commenters posed a few questions about the applicability of the clear and conspicuous standard to particular situations. Some asked whether electronic advertisements or other unrelated promotional information may appear on the same screen as mandatory disclosures that are posted on an Internet web site. Except to the extent required by the regulation, disclosures do not have to be provided separately from other information. Advertisements should not be integrated into the text of the disclosure in a manner that violates the clear and conspicuous standard.

Commenters also had questions about the use of navigational tools with electronic disclosures. For example, some believed that such tools might be helpful in directing consumers to related information that explains the terminology used in the disclosures. Many Internet web sites use navigational tools that are conspicuous through the use of bold text, larger fonts, different colors, underlining, or other methods of highlighting. Such tools are not per se prohibited so long as they are not used in a manner that would violate the clear and conspicuous standard.

Providing Timely Disclosures

Disclosures delivered electronically must comply with existing timing requirements under the ECOA and Regulation B. See, for example, §§ 202.5a, 202.9, and 202.13. Commenters on the Board's 1999 proposals requested specific guidance that an electronic disclosure would be considered timely based on the time it is sent by e-mail or posted on an Internet web site, regardless of when the consumer receives or reads the disclosure.

Under the interim final rule, consistent with rules for disclosures that are sent by postal mail, disclosures provided by e-mail are timely when they are sent by the required time. Disclosures posted at an Internet web site are timely if, by the required time, the creditor both makes the disclosures available at that location and, in accordance with § 202.17(d)(2), sends a notice alerting the applicant that the disclosures have been posted. For example, under § 202.9, a creditor must provide a notice of action taken within 30 days of receiving a completed application. For an adverse action notice posted on the Internet, a creditor must both post the notice and notify the applicant of its availability within 30 days of receiving the completed application. Comment 17(b)–3(ii) contains this guidance.

Certain disclosures must be provided at the time of application. For example, if the creditor's procedures permit the applicant to apply for a mortgage loan on-line, the applicant must be required to access the disclosures required under § 202.13 before submitting the application. A link to the disclosures satisfies the timing rule if the applicant cannot bypass the disclosures before submitting the application. Or, the disclosures in this example must automatically appear on the screen, even if multiple screens are required to view the entire disclosure. Comment 17(b)–3 contains this guidance, as proposed, but has been expanded.

The on-line mortgage loan example was used in the supplementary information of the September 1999 proposed rule to illustrate the timing requirements. Some commenters expressed concern that the example required creditors to provide in writing—on the application—the information required by § 202.13. These commenters asked the Board to clarify that the information required by § 202.13(a) may be requested separately after the creditor begins processing the application.

Regulation B currently requires a creditor that receives an application for a mortgage loan, where the credit will be secured by the dwelling, to request ''as part of the application'' certain applicant characteristic information. See § 202.13(a). The official staff commentary further provides that a creditor may collect the § 202.13(a) information on the application form itself or on a separate form that refers to the application. See comment 13(b)–1. Thus, while § 202.13(a) requires creditors to collect the required information prior to submission of an application, a creditor need not request the information on the application itself. Accordingly, for a dwelling-secured mortgage loan taken over the Internet, the creditor need not include the request on the actual application. A link to the disclosure satisfies the rule if the applicant cannot bypass the disclosure before submitting the application. Or, the information must automatically appear on the screen. In addition, while the disclosure required by § 202.13(c) may be provided orally or in writing, for a mortgage loan taken over the Internet the disclosure would have to appear on the screen—although not on the application form itself—or be accessed before the application is submitted to the creditor.

Some commenters asked the Board to clarify whether there is a requirement to request monitoring information for mortgage loan applications taken over the Internet. The Regulation B commentary currently provides that for purposes of the requirements of § 202.13(a), a creditor may treat an application taken through an electronic medium without video capability as a telephone *or* mail application. Where applications are taken by telephone, a creditor is not required to request applicant characteristic information; where taken by mail, the information must be requested, but the creditor is not required to make a special request if the applicant did not provide the information. See comment 13(b)–3(i)(A), (B). (Creditors should note, however, that in the August 1999 review of Regulation B, the Board proposed to require creditors to treat applications taken through an electronic medium without video capability as taken by mail (64 FR 44581).)

Some industry commenters believed that requiring disclosures to automatically appear or be accessed by the applicant is cumbersome and unnecessary. Some commenters suggested that the Board allow the required disclosures to be accessible via a clearly marked navigational tool; they believe that once the tool is provided, the disclosure should be deemed to have been provided to the applicant.

The ECOA and Regulation B require that disclosures be provided to applicants. It is not sufficient for creditors to provide a bypassable navigational tool that merely gives applicants the option of receiving the disclosures. Such an approach reduces the likelihood that applicants will notice and receive the disclosures. The interim final rule ensures that applicants actually see disclosures provided electronically so that they have the opportunity to read the disclosures in a timely fashion.

Commenters on the various proposals requested guidance regarding the creditor's duty in cases where a creditor cannot provide timely disclosures because an automated loan machine or other automated equipment controlled by the creditor malfunctions or otherwise fails to operate properly. Where the creditor controls the equipment and disclosures are required at that time, a creditor might not be liable for failing to provide timely disclosures if the defense in § 202.14(c) of Regulation B is available.

Providing Disclosures in a Form the Consumer May Keep

With one exception (§ 202.9(a)(3)(i)(B), regarding business credit), retainability is a new standard for disclosures under Regulation B. (In August 1999, the Board requested comment on whether a retainability standard should apply to all disclosures and information required by Regulation B to be in writing (64 FR 44581).) Electronic disclosures required to be in writing are subject to this requirement. Comment 17(b)–4 contains guidance on this requirement.

Applicants may communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), an applicant may not have the ability at a given time to preserve ECOA disclosures presented on-screen. To ensure that applicants have an

adequate opportunity to access and retain the disclosures, the creditor also must send them to the applicant's designated e-mail address or make them available at another location, for example, on the creditor's Internet web site, where the information may be retrieved at a later date.

Where the creditor controls the equipment providing the electronic disclosures (for example, an automated loan machine or computer terminal located in the creditor's lobby), the creditor must ensure that the applicant has the opportunity to retain the required information. Comment 17(b)–5 contains guidance on this requirement.

17(c) When Consent Is Required

Under the E-Sign Act, consumers must affirmatively consent before they receive electronic disclosures ''relating to a transaction'' if the disclosures are required by law or regulation to be in writing. Under Regulation B, the consent requirement has been expanded to include both consumer and business applicants. Some disclosures required to be in writing may be included on or with an application provided to applicants for certain credit regardless of whether the applicant applies for the loan (§§ 202.5a(a)(2)(i) (notice of right to copy of appraisal), 202.9(a)(3)(i)(B) (notice of right to a statement of reasons), and 202.13(a) (request for monitoring information)). Section 202.17(c) is added to make clear that an applicant's affirmative consent is not required before creditors use electronic communication to provide these disclosures on or with an application.

17(d) Address or Location To Receive Electronic Communication

Consistent with the 1999 proposals, the interim rule provides that creditors may deliver electronic disclosures by sending them to an applicant's e-mail address. Alternatively, the rule provides that creditors may make the disclosures available at another location such as an Internet web site. If the creditor makes a disclosure available at such a location, the creditor effectively delivers the disclosure by sending a notice alerting the applicant when the disclosure can be accessed and making the disclosure available for at least 90 days. The time period for keeping disclosures available at a location such as a creditor's Internet web site under the interim rule differs from the 1999 proposals, based on commenters' concerns as discussed below.

17(d)(1)

For purposes of § 202.17(d), an applicant's electronic address is an e-mail address that is not limited to receiving communication transmitted solely by the creditor, as proposed. This guidance is contained in comment 17(d)(1)–1.

An electronic address would not include systems that permit communication only between the consumer and the creditor, for example, home-banking programs that allow consumers to communicate directly with a creditor on-line with the use of a computer and modem. Thus, disclosures provided using systems such as home-banking programs are treated in the same manner as disclosures made available at an Internet web site, and a notice alerting the applicant when disclosures are posted must be sent by e-mail, or to a postal address, at the creditor's option.

17(d)(2)

Under § 202.17(d)(2)(i) of the interim rule, for disclosures made available at an Internet web site, a notice alerting the applicant when disclosures are posted must be sent by e-mail (or to a postal address, at the creditor's option). Section 202.17(d)(2)(i) requires that the alert notice identify the account involved and the address or other location where the disclosure is available. Comment 17(d)(2)–1 provides guidance on the level of detail required in identifying the account.

As proposed, under § 202.17(d)(2)(ii) of the interim rule, disclosures provided at an Internet web site must remain available for at least 90 days. The requirement seeks to ensure that applicants have adequate time to access and retain a disclosure under a variety of circumstances, such as when an applicant may not be able for an extended period of time to access the information due to computer malfunctions, travel, or illness. The 90-day period is uniform for all disclosures, for ease of compliance. Comment 17(d)(2)–2 is added to provide that during this period, the actual disclosures must be available to the applicant, but the creditor has discretion to determine whether they should be available at the same location for the entire period.

Some industry commenters believed the 90-day time period is reasonable and feasible. About an equal number of commenters believed it was too burdensome and costly; some of these commenters suggested periods that ranged from 30 to 60 days.

The Regulation B proposal provided that after the 90-day time period, disclosures would be available upon applicants' request, for 25 months, in the same format as initially provided to the applicant. The 25-month period is consistent with a creditor's duty to retain records that evidence their compliance. Consumer advocates supported the proposed retention period; some recommended that disclosures should be available upon request for the length of the contractual relationship with the applicant.

Industry commenters strongly opposed the 25-month period. Many believed that keeping copies of electronic disclosures actually provided to applicants for that period of time would be costly and burdensome. Moreover, industry commenters believed that once an applicant has accessed the disclosures, the applicant rather than the creditor should have the duty to retain them for future reference. They also noted that under existing record retention requirements applicable to paper disclosures, a creditor need only demonstrate compliance with the rules, but need not retain copies of the actual disclosures provided to applicants.

The requirement for creditors to provide duplicate disclosures upon request for 25 months has not been adopted. A creditor's duty to retain evidence of compliance for 25 months remains unchanged.

17(d)(3) Exceptions

Section 202.17(d)(3) is added to make clear that the requirements of paragraphs (i) and (ii) of § 202.17(d)(2) do not apply to the disclosure required under § 202.13(a).

17(e) Redelivery

Industry commenters on the 1998 proposal asked for clarification that sending the electronic disclosures complies with the regulation, and that institutions are not required to confirm that the consumer actually received them. Consumer advocates asked that institutions be required to verify the delivery of disclosures by return receipt, in the case of e-mail. In the 1999 proposals, the Board solicited comment on the need for and the feasibility of such a requirement.

Consumer advocates believe that e-mail systems are not yet sufficiently reliable, and that safeguards are necessary to ensure that consumers actually receive disclosures. Industry commenters stated that a return receipt requirement would be costly and burdensome, and would require creditors to monitor return receipts in every case to determine that individual consumers received the disclosures.

Section 101(c) of the E-Sign Act requires that consumers consent electronically, or confirm their consent

electronically, in a manner that reasonably demonstrates that the consumer can access the information that the creditor will be providing. This requirement seeks to verify at the outset that the consumer is actually capable of receiving the information in the electronic format being used by the creditor. After the consumer consents, the E-Sign Act also requires creditors to notify consumers of changes that materially affect consumers' ability to access electronic disclosures.

The interim rule does not impose a verification requirement because the cost and burden associated with verifying delivery of disclosures would not be warranted. When electronic disclosures are returned undelivered, however, § 202.17(e) imposes a duty to attempt redelivery (either electronically or to a postal address) based on address information in the creditor's own files. Unlike paper disclosures delivered by postal service, there generally is no commonly-accepted mechanism for reporting a change in electronic address or for forwarding e-mail. Where a creditor actually knows that the delivery of an electronic disclosure did not take place, the creditor should take reasonable steps to effectuate delivery in some way. For example, if an e-mail message to the applicant (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if the creditor sends the disclosure to a different e-mail address or postal address that the creditor has on file. Sending the disclosures a second time to the same electronic address would not be sufficient if the creditor has a different address for the applicant on file. Comment 17(e)–1 provides this guidance.

This redelivery requirement is limited to situations where the electronic communication cannot be delivered and does not apply to situations where the disclosure is delivered but, for example, cannot be read by the applicant due to technical problems with the applicant's software. A creditor's duty to redeliver a disclosure under § 202.17(e) does not affect the timeliness of the disclosure. Creditors comply with the timing requirements of the regulation when a disclosure is initially sent in a timely manner, even though the disclosure is returned undelivered and the creditor is required under § 202.17(e) to take reasonable steps to attempt redelivery.

17(f) Electronic Signatures

The E-Sign Act provides that electronic signatures have the same validity as handwritten signatures. Section 106 of the act defines an electronic signature. Section 202.17(f) is added to incorporate the E-Sign Act's definition of electronic signature into the regulation. To comply with the E-Sign Act, an electronic signature must be executed or adopted by an applicant with the intent to sign the record. Accordingly, regardless of the technology used to meet this requirement, the process must evidence the applicant's identity. Comment 17(f)–1 provides this guidance.

Additional Issues

Document Integrity

The interim rule does not impose document integrity standards. Consumer advocates and others expressed concerns that electronic documents can be altered more easily than paper documents. They say that consumers' ability to enforce rights under the consumer protection laws could be impaired, in some cases, if the authenticity of disclosures they retain cannot be demonstrated.

Institutions are generally required to retain evidence of compliance with the Board's consumer regulations. Accordingly, the Board requested comment on the feasibility of requiring institutions to have systems in place capable of detecting whether or not information has been altered, or to use independent certification authorities to verify disclosure documents.

Consumer advocates strongly supported document integrity requirements (including the use of certification authorities) that would apply to all-electronic disclosures. Signatures, notary seals, and verification procedures such as recordation are used to protect against alterations for transactions memorialized in paper form. Consumer advocates believe that comparable verification procedures are needed for electronic disclosures as well.

Industry commenters opposed mandatory document integrity standards for electronic disclosures. Because the technology in this area is still evolving, they believe that mandatory standards would be premature. Others believe that imposing document integrity standards or requiring the use of certification authorities would be costly to implement.

The Board recognizes the concerns about document integrity, but believes it is not practicable at this time to impose document integrity standards for consumer disclosures or mandate the use of independent certification authorities. Effective methods may be too costly. Other less costly methods may deter alterations in some cases, but would not necessarily ensure document integrity.

Moreover, the issue of document integrity affects electronic commerce generally and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Section 104(b)(3) of the E-Sign Act authorizes federal or state regulatory agencies to specify performance standards to assure the accuracy, record integrity, and accessibility of records that are required to be retained, but prohibits the agencies from requiring the use of a particular type of software or hardware in order to comply with record retention requirements. Technology is likely to develop to protect electronic contracts and other legal documents. Thus, it seems premature for the Board to specify any particular standards or methods for consumer disclosure at this time.

V. Form of Comment Letters

Comment letters should refer to Docket No. R–1040, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

VI. Regulatory Flexibility Analysis

The Board has reviewed these interim amendments to Regulation B, in accordance with section 3(a) of the Regulatory Flexibility Act (5 U.SC. 604). Two of the three requirements of a final regulatory flexibility analysis under the Act are (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of those issues, and a statement of the changes made in the final rule in response to the comments. These two areas are discussed above.

The third requirement of the analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. This interim final rule is designed to provide creditors with an alternative method of providing disclosures; the rule will relieve compliance burden by giving creditors flexibility in providing disclosures required by the regulation.

Overall, the costs of providing electronic disclosures are not expected to have significant impact on small entities. The expectation is that providing electronic disclosures may ultimately reduce the costs associated with providing disclosures.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. 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 7100–0201.

The collection of information that is revised by this rulemaking is found in 12 CFR Part 202. This information is mandatory (15 U.S.C. 1691 *et seq.*) to evidence compliance with the requirements of Regulation B and the Equal Credit Opportunity Act (ECOA). The respondents/recordkeepers are creditors. Creditors are required to retain records for twenty-five months (12 months for business credit). This regulation applies to all types of creditors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The revisions provide that creditors may deliver disclosures electronically upon obtaining applicants' affirmative consent in accordance with the E-Sign Act. The revisions also provide guidance to creditors on the timing and delivery of electronic disclosures, to ensure that applicants have adequate opportunity to access and retain the information.

With respect to state member banks, it is estimated that there are 1000 respondent/recordkeepers and an average frequency of 4,767 responses per respondent each year. The current annual burden is estimated to be 125,678 hours. No comments specifically addressing the burden estimate were received, therefore, the numbers remain unchanged. There is estimated to be no additional cost burden and no capital or start up cost associated with the interim final rule.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503.

VIII. 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 comment on whether the interim rule is clearly stated and effectively organized, and how the Board might make the rule easier to understand.

List of Subjects in 12 CFR Part 202

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

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

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

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

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.4 is revised as follows:

§ 202.4 General rules.

(a) *Rule prohibiting discrimination.* A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

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

3. Section 202.9 is amended by adding a new paragraph (h) to read as follows:

§ 202.9 Notifications.

* * * * *

(h) *Duties of third parties.* A third party may use electronic communication in accordance with the requirements of § 202.17, as applicable, to comply with the requirements of paragraph (g) of this section on behalf of a creditor.

§ 202.16 [Added and reserved]

4. Add and reserve § 202.16.

5. Add a new § 202.17 to read as follows:

§ 202.17 Requirements for electronic communication.

(a) *Definition. Electronic communication* means a message transmitted electronically between a creditor and an applicant in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules of this part, a creditor may provide by electronic communication any disclosure required by this part to be in writing. Disclosures provided by electronic communication must be provided in a clear and conspicuous manner and in a form the applicant may retain.

(c) *When consent is required.* For disclosures required by this part to be in writing, a creditor shall obtain an applicant's affirmative consent in accordance with the requirements of the E-Sign Act. Disclosures under §§ 202.5a(a)(2)(i), 202.9(a)(3)(i)(B), and 202.13(a) are not subject to this requirement if provided on or with the application.

(d) *Address or location to receive electronic communication.* A creditor that uses electronic communication to provide disclosures required by this part shall:

(1) Send the disclosure to the applicant's electronic address; or

(2) Make the disclosure available at another location such as an Internet web site; and

(i) Alert the applicant of the disclosure's availability by sending a notice to the applicant's electronic address (or to a postal address, at the creditor's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the applicant of the disclosure, whichever comes later.

(3) *Exceptions.* A creditor need not comply with paragraph (d)(2)(i) and (ii) of this section for the disclosure required by § 202.13(a).

(e) *Redelivery.* When a disclosure provided by electronic communication is returned to a creditor undelivered, the creditor shall take reasonable steps to attempt redelivery using information in its files.

(f) *Electronic signatures.* An electronic signature as defined under the E-Sign Act satisfies any requirement under this part for an applicant's signature or initials.

6. In Supplement I to Part 202, a new *Section 202.16* is added and reserved and a new *Section 202.17* is added to read as follows:

* * * * *

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.16—[Reserved]

Section 202.17—Electronic Communication

(b) General Rule

1. *Relationship to the E-Sign Act.* The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under this part other than a provision that requires disclosures to be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and conspicuous standard. For example, to satisfy the clear and conspicuous standard for disclosures, electronic disclosures must use visual text. The clear and conspicuous and retainability requirements apply to all disclosures provided electronically—those expressly required by the act and regulation to be in writing, and those provided in writing where the creditor has the option to give the disclosure orally or in writing.

2. *Clear and conspicuous standard.* A creditor must provide electronic disclosures using a clear and conspicuous format. Also, in accordance with the E-Sign Act:

i. The creditor must disclose the requirements for accessing and retaining disclosures in that format;

ii. The applicant must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and

iii. The creditor must provide the disclosures in accordance with the specified requirements.

3. *Timing and effective delivery.*

i. *When an applicant applies for credit on-line.* When a creditor permits an applicant to apply for credit on-line, the applicant must be required to access the disclosures required at application before submitting the application. A link to the disclosures satisfies the timing rule if the applicant cannot bypass the disclosures before submitting the application. Or the disclosures must automatically appear on the screen, even if multiple screens are required to view all of the information. The creditor is not required to confirm that the applicant has read the disclosures.

ii. *Appraisals and adverse action.* Disclosures provided by e-mail are timely based on when the disclosures are sent. Disclosures posted at an Internet web site, such as adverse action notices or copies of appraisals, are timely when the creditor has both made the disclosures available and sent a notice alerting the applicant that the disclosures have been posted. For example, under § 202.9, a creditor must provide a notice of action taken within 30 days of receiving a completed application. For an adverse action notice posted on the Internet, a creditor must post the notice and notify the applicant of its availability within 30 days of receiving the applicant's completed application.

4. *Retainability of disclosures.* Creditors satisfy the requirement that disclosures be in a form that the applicant may keep if electronic disclosures are delivered in a format that is capable of being retained (such as by printing or storing electronically). The format must also be consistent with the information required to be provided under section 101(c)(1)(C)(i) of the E-Sign Act (15 U.S.C. 7001(c)(1)(*C*)(i)) about the hardware and software requirements for accessing and retaining electronic disclosures.

5. *Disclosures provided on creditor's equipment.* A creditor that controls the equipment providing electronic disclosures to applicants (for example, a computer terminal in a creditor's lobby or an automated loan machine at a public kiosk) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and conspicuous format and in a form that the applicant may keep. For example, if disclosures are required at the time of an on-line application, the disclosures must be sent to the applicant's e-mail address or must be made available at another location such as the creditor's Internet web site, unless the creditor provides a printer that automatically prints the disclosures.

17(d) Address or Location To Receive Electronic Communication

Paragraph 17(d)(1)

1. *Electronic address.* An applicant's electronic address is an e-mail address that is not limited to receiving communication transmitted solely by the creditor.

Paragraph 17(d)(2)

1. *Identifying account involved.* A creditor may identify a specific account in a variety of ways and is not required to identify an account by reference to the account number. For example, where the applicant has only one credit card account, and no confusion would result, the creditor may refer to ''your credit card account.'' If the applicant has two credit card accounts, the creditor may, for example, differentiate accounts based on the card program or by using a truncated account number.

2. *90-day rule.* The actual disclosures provided to an applicant must be available for at least 90 days, but the creditor has discretion to determine whether they should be available at the same location for the entire period.

17(e) Redelivery

1. *E-mail returned as undeliverable.* If an e-mail to the applicant (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if, for example, the creditor sends the disclosure to a different e-mail address or postal address that the creditor has on file for the applicant. Sending the disclosures a second time to the same electronic address is not sufficient if the creditor has a different address for the applicant on file.

17(f) Electronic Signatures

1. *Relationship to the E-Sign Act.* The E-Sign Act provides that electronic signatures have the same validity as handwritten signatures. Section 106 of the E-Sign Act (15 U.S.C. 7006) defines an electronic signature. To comply with the E-Sign Act, an electronic signature must be executed or adopted by an applicant with the intent to sign the record. Accordingly, regardless of the technology used to meet this requirement, the process must evidence the applicant's identity.

By order of the Board of Governors of the Federal Reserve System, March 29, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–8150 Filed 4–3–01; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1041]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim Rule; request for comments.

SUMMARY: The Board is adopting an interim final rule amending Regulation E, which implements the Electronic Fund Transfer Act, to establish uniform standards for the electronic delivery of disclosures required by the act and regulation. The rule provides guidance on the timing and delivery of electronic disclosures to ensure consumers have adequate opportunity to access and retain information when shopping for electronic fund transfer services. (Similar rules are being adopted under other consumer financial services and fair lending regulations administered by the Board.) Under the rule, financial institutions may deliver disclosures electronically if they obtain consumers' affirmative consent in accordance with the Electronic Signatures in Global and National Commerce Act. Consistent with that act, an interim rule issued previously, regarding the electronic delivery of disclosures upon consumers' agreement, is withdrawn. In addition, the regulation is revised to allow