FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1003]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending Regulation DD which implements the Truth in Savings Act. The proposed rule would allow depository institutions to deliver by electronic communication disclosures required by the act and regulation, if the consumer agrees to such delivery. In addition, the Board is publishing proposed amendments to implement amendments to the Truth in Savings Act enacted as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The law modifies the rules for indoor lobby signs, eliminates subsequent disclosure requirements for automatically renewable time accounts with terms less than one month, and repeals the civil liability provisions as of September 30, 2001.

DATES: Comments must be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R–1003, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel or Obrea Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452–3667 or 452–2412. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA) is implemented by the Board's Regulation DD, issued September 21, 1992 (57 FR 43337) (correction notice at 57 FR 46480, October 9, 1992). Compliance with the regulation became mandatory in June 1993. The act and regulation require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening. The regulation also includes rules about advertising of deposit accounts. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration.

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication for delivery of information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example in May 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) that allowed financial institutions to send notices electronically. (62 FR 13801, March 18, 1997.)

Having considered the comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation DD to allow institutions to provide Regulation DD disclosures electronically; such disclosures would remain subject to any applicable timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed revisions to address electronic communication under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), and Z (Truth in Lending), published elsewhere in today's **Federal Register**. In addition, the Board has issued an interim rule under Regulation E also published elsewhere in today's **Federal Register**, so that financial institutions can implement systems to provide Electronic Fund Transfer Act information electronically.

II. Proposed Regulatory Revisions

Electronic Communication

The TISA and Regulation DD require several disclosures to be provided to consumers in writing. Under Regulation DD, the regulatory requirement that disclosures be in writing has been presumed to require institutions to provide paper documents. However, under many laws that call for information to be in writing, information in electronic form is considered to be ''written.'' Information produced, stored, or communicated by computer is also generally considered to be a writing at least where visual text is involved.

Therefore, pursuant to its authority under Section 269 of the TISA, the Board proposes to amend Regulation DD to permit depository institutions to use electronic communication where the regulation calls for information to be provided in writing. The term ''electronic communication'' is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of ''electronic communication'' for purposes of this regulation because they do not have the feature generally associated with a writing—visual text.

Statutory Amendments

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (1996 Act) contains amendments to the TISA. An amendment to section 266(a)(3) eliminates the requirement that institutions provide disclosures in advance of maturity for automatically renewable (rollover) time accounts with a term of 30 days or less. The Board believes the Congressional intent was to eliminate any subsequent disclosures for monthly time accounts. Accordingly, the proposed amendments to Regulation DD delete § 230.5(c), which requires that institutions disclose (after the account is opened) any changes in account terms for rollover time accounts with a maturity of one month or less. Institutions will continue to provide disclosures when these accounts are opened.

An amendment to section 263(c) of the act expands an exemption from certain advertising provisions for signs on the premises of a depository institution. The proposed amendments to Regulation DD apply this exemption to all signs on the premises of an institution. Section 230.8(e) would be revised to exempt those signs that are inside the premises of the depository institution, including those that face out. Any sign posted outside the depository institution would remain

covered by the advertising provisions unless the sign is exempt by some other provision (such as the electronic media exemption). The 1996 Act repeals the TISA's civil liability provisions, effective September 30, 2001. This statutory amendment does not require a regulatory revision, as the regulation generally does not address civil liability.

III. Section-by-Section Analysis

Section 230.3 General Disclosure Requirements

Section 230.3(a) would be revised to address electronic communication. ''Electronic communication'' is a visual text message electronically transmitted between a depository institution and a consumer's home computer or other electronic device used by a consumer.

Agreements Between Institutions and Consumers

Section 230.3(a)(2) would permit depository institutions to send electronic disclosures if the consumer agrees. There may be various ways that a financial institution and a consumer could agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be determined by applicable state law. The regulation would not preclude a depository institution and a consumer from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of TISA disclosures and other information electronically.

Delivery Requirements for Electronic Communication

Regulation DD provides that an institution must, for example, ''provide'' or ''deliver'' information to a consumer. Generally, the delivery requirement anticipates that a depository institution will deliver the information—typically by mail—to an address designated by the consumer. For a paper communication, a depository institution would not satisfy that requirement by making disclosures ''available'' to consumers, for example, at a financial institution's office (or other location). The Board believes that consumers receiving disclosures by electronic communication should have protections regarding delivery similar to those afforded consumers receiving disclosures in paper form. Simply posting information on an Internet site without some appropriate notice and instructions about how the consumer may obtain the required information would not satisfy the requirement.

The requirement to send or deliver disclosures to a consumer would be satisfied if the institution ensures that the disclosures will be displayed in a timely manner. For example, under Regulation DD, account disclosures must be provided before the consumer opens an account or a service is provided, whichever is earlier. Assume that a consumer uses a personal computer to open an account and consents to the electronic delivery of account disclosures. If the disclosures automatically appear on the computer screen before the account is opened or the service is provided (in accordance with the format, timing, and any other requirements of the act and regulation), the institution would satisfy the requirement to send (or deliver or transmit) disclosures to the consumer.

As a practical matter, there may be little distinction between sending or delivering electronic disclosures and making them ''available.'' Depository institutions have flexibility in how they deliver electronic disclosures to consumers including, but not limited to, the following examples. They may send disclosures to a consumer-designated electronic mail address, or they may designate a location on a website where the consumer might enter a personal identification number or other identifier to access required information. If a consumer opens an account, receives the account disclosures at that time, and agrees to receive all Regulation DD disclosures electronically, subsequent disclosures, such as periodic statements or change-in-terms notices, sent (or delivered) to the designated address or placed at a designated location would generally satisfy the delivery requirements of the regulation.

Electronic communication would remain subject to any timing or other applicable requirements under Regulation DD. For example, a depository institution that sends a change-in-terms notice required by § 230.5(a) of Regulation DD must satisfy the requirement to provide the notice to a consumer at least 30 days in advance of the change. The Board solicits comment on whether further guidance is needed on how to comply wth the timing requirements when a notice is posted on an Internet website.

Timing of Providing Account Opening Disclosures

Account opening disclosures, required under § 230.4(a), set forth the terms and conditions of the account. These disclosures inform the consumers of the types and amount of any fees that may be imposed and the interest rate and annual percentage yield (APY) that will be paid on the account. Section 230.4(a)(1) requires that account disclosures be provided before an account is opened or a service is provided, whichever is earlier.

Section 266(b) of the TISA provides that if the consumer is not present at the institution when an initial account is accepted (and the disclosures have not been furnished previously) the institution shall mail or deliver the disclosures no later than ten days after the account is opened or the service is provided. The rationale underlying the ten-day exception is that, in some instances (such as when an account is opened by telephone), the institution cannot provide written disclosures before an account is opened. Because this proposal would permit disclosures to be provided electronically, the same difficulty does not exist if an account is opened electronically. Thus, the Board believes that this ten-day exception should not apply. One major purpose of the TISA is to require clear and uniform disclosure so that consumers can make meaningful comparisons of deposit accounts offered by financial institutions before opening an account. The Board believes that permitting a ten-day delay would seriously diminish the consumer's ability to compare account terms and, therefore, hinder an explicit purpose of the TISA. Thus, the proposed rule requires that account opening disclosures be given before the account is opened or a service is provided, when an account is opened using electronic communication.

Requirement That Information be ''Clear and Conspicuous''

Section 230.3(a) of Regulation DD requires depository institutions to present required information ''clearly and conspicuously.'' Under the proposed rule, the ''clear and conspicuous'' requirement applies to electronic communication. The Board does not intend to discourage or encourage specific types of technologies. Regardless of technology, however, the disclosures provided by electronic communication must meet the ''clear and conspicuous'' standard. While a depository institution is generally not required to ensure that the consumer has the equipment to read the disclosures, in some circumstances institutions would have the responsibility of making sure the proper equipment is in place. For example, if financial services are offered through terminals in an institution's premises, or through kiosks located in public or other places (such as grocery stores), the

institution must ensure that the equipment meets the clear and conspicuous standard for TISA disclosures that are being provided electronically.

Consumer Ability to Retain Disclosures

Section 230.3(a) of Regulation DD requires that written disclosures be in a form the consumer may keep. This requirement would apply to disclosures provided by electronic communication. Depository institutions would satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the consumer. The requirements for electronic delivery are similar to the current paper requirements, where depository institutions generally must mail or deliver the information to the consumer but need not ensure that the consumer reads or retains it. Thus, depository institutions would not be required to monitor an individual consumer's ability to retain the information, nor to take steps to find out whether the consumer has in fact retained it. The Board anticipates that a depository institution would inform the consumer of any special technical specifications for receiving or retaining information before or at the time a consumer agrees to receive information electronically.

As in the case of the ''clear and conspicuous'' standard discussed above, in circumstances where the financial institution (or a network in which the institution is a member) controls the equipment to be used for a service—such as terminals in institution lobbies or kiosks in shopping centers—the institution would have the responsibility of ensuring retainability. Methods for fulfilling this requirement could include, for example, printers incorporated into terminals or a screen message offering to transmit the disclosure to the consumer's electronic mail or post office or other address provided that the delivery requirements (discussed above) are satisfied.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive federal disclosures in paper form. As electronic commerce and electronic banking increase and technological advances take place, obtaining disclosures by electronic communication will likely become more commonplace. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. In light of this evolution, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that depository institutions and other institutions subject to Regulation DD will provide sufficient details about the delivery of disclosures. The Board plans to closely monitor the development of electronic delivery of TISA disclosures and other information, and will address compliance or other issues that may arise as appropriate.

Section 230.5 Subsequent Disclosures

5(c) Notice for Time Accounts One Month or Less That Renew Automatically

Section 266(a)(3) of the TISA requires institutions to provide certain disclosures for rollover time accounts at least 30 days before maturity. In implementing this provision in 1992, the Board looked to the legislative history of the TISA, which suggested special rules for short-term time accounts. The Board determined that the purposes of the legislation would not be served by requiring advance disclosures for rollover time accounts with maturities of one month or less. Regulation DD therefore did not require disclosures to be provided in advance of maturity for such time accounts. However, under § 230.5(c) of the regulation, if a term disclosed when the account was opened is changed at renewal, institutions were required to send a notice describing the change within a reasonable time after the renewal of the account.

The 1996 Act eliminates the requirement that institutions provide disclosures in advance of maturity for automatically renewable time accounts with a term of 30 days or less. (Institutions will continue to provide disclosures when these accounts are opened.) Accordingly, the Board proposes to delete § 230.5(c) and the corresponding provision in the official staff commentary, comment 5(c)-1.

The statute eliminates these disclosures for rollover time accounts with a maturity of 30 days or less. Technically, the statute could be read to require subsequent disclosures for rollover time accounts with a maturity of 31 days. For ease of compliance, the Board proposes to eliminate subsequent disclosures for rollover time accounts with a maturity of ''one month or less.'' This approach would not require subsequent disclosures for accounts with a maturity of 31 days and is consistent with other provisions of Regulation DD that interpret one month to include 31 days.

Section 230.8 Advertising

8(e) Exemption for Certain Advertisements

8(e)(2) Indoor Signs

Section 263(a) of the TISA provides that a reference to a specific interest rate, yield, or rate of earnings in an advertisement triggers a duty to state certain additional information, including the annual percentage yield. In 1994, the Congress amended section 263(c) of the advertising rules to provide that if a rate is displayed on a sign (including a rate board) designed to be viewed only from the interior of an institution, the disclosure requirements of section 263 do not apply.

A further amendment to section 263(c) of the TISA contained in the 1996 Act expands the exemption for signs on the premises of the depository institution. Under the Board's proposal, all signs inside the premises of an institution would be exempt from certain advertising disclosures (including signs that face outdoors and that are intended to be viewed from outside the premises). The proposal would delete the reference in § 230.8(e) to signs that face outside and the corresponding provision in the official staff commentary, comment 8(e)(2)(i)2. Any sign posted outside a depository institution remains covered by the advertising provisions unless the sign qualifies for some other exemption, such as the exemption for broadcast or electronic media.

Section 230.8(e) of Regulation DD exempts advertisements made through broadcast or electronic media from several of the mandatory advertising disclosures. Questions have arisen about whether the limited exception for broadcast media applies to computer or other advertisements, such as those posted on the Internet. The Board believes that such advertisements are not exempt under the broadcast or electronic media provision. The rationale for broadcast and electronic media exemptions is that these media have time or space constraints that make it extremely burdensome to provide the required disclosures. Advertisements posted on the Internet generally do not have the same time and space constraints. Such advertisements would remain subject to the general advertising rules and, therefore, must comply with the requirements of §§ 230.8(a), (b), (c), and (d) of this section.

Appendix B to Part 230—Model Clauses and Sample Forms

The Board is not proposing any amendments to the model forms and

clauses in Appendix B. The Board believes that financial institutions can adapt the current forms and clauses in Appendix B for electronic use.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1003 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 ½ inch or 5 ¼ inch computer diskettes in any IBM-compatible DOS-based format.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's office of the Secretary has reviewed the proposed amendments to Regulation DD. Overall, the proposed amendments are not expected to have any significant impact on small entities. The proposed rule would relieve compliance burden. The proposed rule would also give depository institutions flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

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

The Federal Reserve has no data with which to estimate the change in the burden that would be the result of the proposed acceptability of electronic communications. Depository institutions would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to print and mail the information in paper form. The use of electronic communication in home banking and financial services may reduce the paperwork burden on creditors and financial institutions or merely may reduce the dollar cost.

The Federal Reserve requests comments from depository institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this rule is effective. Comments are invited on: (a) whether the proposed revised 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 proposed revised 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 the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found throughout 12 CFR part 230 and in Appendices A and B. This information is mandatory (12 U.S.C. 4308) to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, annual percentage yield, interest rate, and other account terms whenever a consumer requests the information and before an account is opened. The regulation also requires that fees and other information be provided on any periodic statement the institution sends to the consumer. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Records, required to evidence compliance with the regulation, must be retained for twenty-four months.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation DD (OMB No. 7100–0271) for three years. The current estimated total annual burden for this information collection is 1,478,395 hours, as shown in the top half of the table below. These amounts reflect the burden estimate of the Federal Reserve System for the 996 state member banks under its supervision. This regulation applies to all types of depository institutions (except credit unions), not just to state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve only accounts for the burden of the paperwork associated with state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

Both the proposed rules for indoor lobby signs and elimination of subsequent disclosure requirements for automatically renewable time accounts with terms less than one month would decrease the frequency of response slightly; these reductions are shown in the bottom half of the table. It is estimated that the total amount of annual burden after these two proposed revisions would be 1,476,071 hours. There is estimated to be no associated capital or start up cost. The Federal Reserve has not estimated there to be any annual cost burden over the annual hour burden.

	Number of respondents	Estimated annual frequency	Estimated response time	Eestimated annual burden hours
Current				
Complete account disclosures (Upon request and new accounts)	996	300	5 minutes	24,900
Subsequent notices:				
Change in terms	996	1,130	1 minute	18,757
Prematurity notices	996	1,095	1 minute	18,177
Periodic statements	996	84,615	1 minute	1,404,609
Advertising	996	12	1 hour	11,952
Total				1,478,395
Proposed				
Complete account disclosures (Upon request and new accounts)	996	300	5 minutes	24,900
Subsequent notices:				
Change in terms	996	1,130	1 minute	18,757

	Number of respondents	Estimated annual frequency	Estimated response time	Eestimated annual burden hours
Prematurity notices	996	1,015	1 minute	16,849
Periodic statements	996	84,615	1 minute	1,404,609
Advertising	996	11	1 hour	10,956
Total				1,476,071
Change				−2,324

The initial disclosures concerning consumers' rights and responsibilities for error resolution are available to the public. Transaction- or account-specific disclosures are not publicly available and are confidential between the depository institution and the consumer. 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. 552(b)). 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 7100–0271.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

Text of Proposed Revisions

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

For the reasons set forth in the preamble, the Board proposes to amend, 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. In § 230.3, the following amendments would be made:

a. By designating the text of paragraph (a) as paragraph (a)(1) and adding a heading to newly designated paragraph (a)(1);

b. A new paragraph (a)(2) would be added.

The addition and revisions would read as follows:

§ 230.3 General disclosure requirements.

(a) *Form.*—►(1) *General requirements.*◄ * * *

►(2) *Electronic communication*◄. The term *electronic communication* means a message transmitted electronically between a consumer and a depository institution in a format that allows visual text to be displayed on equipment such as a personal computer monitor. A depository institution and a consumer may agree to send by electronic communication any information required by §§ 230.4 through 230.6 of this part. Information sent by electronic communication to a consumer must comply with paragraph (a)(1) of this section and any applicable timing requirements contained in this part.◄

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3. Section 230.5 would be amended by removing paragraph (c) and redesignating paragraph (d) as new paragraph (c):

§ 230.5 Subsequent disclosures.

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[(c) *Notice for time accounts one month or less that renew automatically.* For time accounts with a maturity one month or less that renew automatically at maturity, institutions shall disclose any difference in the terms of the new account as compared to the terms required to be disclosed under § 230.4(b) of this part for the existing account, other than a change in the interest rate and corresponding change in the annual percentage yield. The notice shall be mailed or delivered within a reasonable time after the renewal.]

4. Section 230.8 would be amended by revising paragraph (e)(2)(i) to read as follows:

§ 230.8 Advertising.

* * * * *

(e) *Exemption for certain advertisements.* * * *

(2) *Indoor signs.* (i) Signs inside the premises of a depository institution (or the premises of a deposit broker) are not subject to paragraphs (b), (c), (d) or (e)(1) of this section [unless they face outside the premises and can reasonably be viewed by a consumer only from outside the premises].

* * * * *

5. In Supplement I to Part 230, in § 230.5—Subsequent disclosures, under paragraph (c), paragraph 1. would be removed:

Supplement I to Part 230—Official Staff Interpretations

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§ 230.5 Subsequent disclosures

* * * * *

(c) Notice for time accounts one month or less that renew automatically

[1. *Providing disclosures within a reasonable time.* Generally, 10 calendar days after an account renews is a reasonable time for providing disclosures. For time accounts shorter than 10 days, disclosures should be given prior to the next renewal date. For example, if a time account automatically renews every 7 days, disclosures about an account that renews on Wednesday, December 7, 1994, should be given prior to Wednesday, December 14.]

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6. In Supplement I to Part 230, in § 230.8—Advertising, under paragraph (e)(2)(i), paragraph 2. would be removed.

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§ 230.8 Advertising

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(e)(2) Indoor signs.

(e)(2)(i)

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[2. *Consumers outside the premises.* Advertisements may be ''indoor signs'' even though they may be viewed by consumers from outside. An example is a banner, in an institution's glass-enclosed branch office, that is located behind a teller facing customers but is readable by passersby.]

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By order of the Board of Governors of the Federal Reserve System, March 12, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–6989 Filed 3–24–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1004]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending Regulation M, which implements the Consumer Leasing Act. The act requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The proposed rule would allow lessors to deliver by electronic communication the disclosures required by the act and regulation, if the consumer agrees to such delivery. For purposes of the regulation, an electronic communication is a message transmitted electronically that allows visual text to be displayed on equipment such as a modem-equipped computer. In addition, the proposal contains several technical amendments that would be made to the regulation and commentary.

DATES: Comments should be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R–1004, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Obrea Poindexter or Kyung Cho-Miller, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

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

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication to deliver information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example, in May 1996 the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) that allowed financial institutions to send notices electronically. (62 FR 13801, March 18, 1997.)

Having considered the comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation M to allow lessors to provide Regulation M disclosures electronically. Any electronic communication would remain subject to the timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed rules to address electronic communication under Regulations DD (Truth in Savings), B (Equal Credit Opportunity), and Z (Truth in Lending), published elsewhere in today's **Federal Register**. In addition, the Board has issued an interim rule under Regulation E also published elsewhere in today's **Federal Register** so that financial institutions can implement systems to provide Electronic Fund Transfer Act disclosures electronically.

II. Proposed Regulatory Revisions

The CLA and Regulation M require disclosures to be provided to consumers in writing. Under Regulation M, the requirement that disclosures be in writing has been presumed to require that lessors provide paper documents. However, under many laws that call for information to be in writing, information in electronic form is considered to be ''written.'' Information produced, stored, or communicated by computer is also generally considered to be a writing at least where text is involved.

Pursuant to its authority under section 187 of the CLA, the Board proposes to amend Regulation M to permit lessors to use electronic communication where the regulation calls for information to be provided in writing. Few lessors currently consummate lease agreements electronically; however, as standards are developed for establishing legal agreements by electronic communication, more lease contracts may be entered into by that means.

The term ''electronic communication'' is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of ''electronic communication'' for purposes of this regulation because they do not have the feature generally associated with a writing—visual text.

Section 213.3—General Disclosure Requirements

3(a) General requirements

Definition

Section 213.3(a) would be revised to address electronic communications under § 213.3(a)(5). Electronic communication is a visual text message electronically transmitted between a lessor and a consumer's home computer or other electronic device used by a consumer.

Agreements Between Lessors and Consumers

Section 213.3(a)(5) permits lessors to send electronic disclosures if the consumer agrees. There may be various ways that a lessor and a consumer could agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be