(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]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1041]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: 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

financial institutions to provide disclosures in foreign languages, and to make technical changes to the model error resolution notices. The rule is being adopted as an interim rule to allow for additional public comment.

DATES: This 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–1041, 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: John C. Wood, Counsel, or Natalie E. Taylor, Counsel, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667.

SUPPLEMENTARY INFORMATION:

I. Background

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

EFTA and Regulation E require a number of disclosures to be provided in writing, presuming that financial institutions provide paper documents. Under the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*), 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 under Regulation E permitting the electronic delivery of disclosures (63 FR 14528) and similar proposals under Regulation Z (63 FR 14548) and other financial services and fair lending 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, financial institutions, creditors, lessors, and others to provide disclosures electronically if the consumer agrees, 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 and interim rule, 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 in-person transactions 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 E. Consistent with the requirements of the E-Sign Act, financial institutions generally must obtain consumers' 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 consumer, or they may be made available at another location, such as an Internet web site. If the disclosures are not sent by e-mail, consumers 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 consumers adequate time to access and retain the information. With regard to the timing of electronic disclosures, for disclosures that must be provided at the time the consumer contracts for an electronic fund transfer service (or before the first transfer), consumers are required to access the disclosures before contracting or making the first transfer. Under the interim rule, institutions 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 B, M, Z, and DD.

III. Request for Comment

Interim Rules

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 consumers confirm their consent electronically in a manner that reasonably demonstrates they can access information in the form to be used by the financial institution? Is clarification needed on the effect of consumers' withdrawing their consent, or on requesting paper copies of electronic disclosures? Institutions must also inform consumers of changes in hardware or software requirements if the change creates a material risk that the consumer 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 E and other financial services and fair lending 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.

As an example, under Regulations E, Z, and DD, periodic statements inform consumers about their account activity over a period of time, typically monthly. The beginning and ending dates of the cycle determine account balances and other information that must be disclosed. In addition, transmittal of the periodic statement triggers important consumer protections such as error resolution procedures. Online banking, however, can provide consumers with up-to-date information about their accounts on a continuing basis. Such information is a helpful supplement to—but does not comply as a substitute for—periodic statements. Should the

rules for periodic statements be modified for online banking, and if so, how could the rules be crafted to maintain for consumers (1) a perspective of the activity of an account over time, and (2) protections for resolving errors or liability for unauthorized transactions?

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 904 of the EFTA, the Board amends Regulation E 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 financial institution may make electronic disclosures available at its Internet web site instead of providing the disclosures directly to the consumer, the Board finds that such an exception is warranted, acting pursuant to its authority under section 904(c) of the EFTA. 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 205.4 General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

4(a)(2) Foreign Language Disclosures

To provide consistency among the regulations, the guidance currently contained in comment 4(a)–2, permitting financial institutions to provide disclosures in languages other than English (as long as disclosures in English are available to consumers who request them) is set forth in new § 205.4(a)(2).

4(c) Electronic Communication

Section 205.4(c) was adopted by the Board in March 1998 as an interim rule allowing the electronic delivery of disclosures required under Regulation E, if the consumer agrees. The 1998 interim rule did not specify the manner or form of consumers' consent to electronic statements.

Effective October 1, 2000, the E-Sign Act permits institutions to provide disclosures to consumers using electronic communication, if the institution complies with Section 101(c) of that act. Section 101(c) of the E-Sign Act requires institutions to provide specific information about the electronic delivery of disclosures and obtain the consumer's affirmative consent to receive electronic disclosures. As discussed below, § 205.17 is being adopted to set forth the general rule that institutions subject to Regulation E may provide disclosures electronically only if the institution complies with Section 101(c) of the E-Sign Act. The 1998 interim rule is withdrawn accordingly, and § 205.4(c) is amended to provide a cross reference to new § 205.17, to ease compliance.

Section 205.17 Requirements for Electronic Communication

17(a) Definition

As adopted, the definition of the term ''electronic communication'' remains substantially unchanged from the 1999 proposals. Section 205.17(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. Because the rule permits the use of electronic communication to satisfy the statutory requirement for written disclosures that must be clear and readily understandable, the Board believes visual text is an essential element of the definition. Institutions that accommodate vision-impaired consumers 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 readily understandable'' format requirement, discussed below.

17(b) General Rule

Effective October 1, 2000, the E-Sign Act permits financial institutions to provide disclosures using electronic communication, if the financial institution complies with the consumer consent requirements in Section 101(c). Under section 101(c) of the E-Sign Act, financial institutions 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. Accordingly, § 205.17(b) sets forth the general rule that financial institutions subject to Regulation E may provide disclosures electronically if the financial institution complies with section 101(c) of the E-Sign Act.

The E-Sign Act authorizes the use of electronic disclosures. The act does not affect any requirement imposed under EFTA other than a provision that requires disclosures to be in paper form, and the act 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 readily understandable standard. Comment 17(b)–1 contains this guidance.

Presenting Disclosures in a Clear and Readily Understandable Format

Electronic disclosures must be clear and readily understandable, as is the case for all written disclosures under EFTA and Regulation E. See § 205.4(a). A financial institution must provide electronic disclosures using a clear and readily understandable format. Also, in accordance with the E-Sign Act: (1) The institution must disclose the requirements for accessing and retaining disclosures in that format; (2) the consumer must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and (3) the institution 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 readily understandable 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 readily understandable 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 readily understandable standard.

Providing Timely Disclosures

Disclosures delivered electronically must comply with existing timing requirements under EFTA and Regulation E. See, for example, §§ 205.7(a), 205.8(a)(1), and 205.9(b). 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 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 periodically at an Internet web site are timely if, by the required time, the financial institution both makes the disclosures available at that location and, in accordance with § 205.17(c)(2), sends a notice alerting the consumer that the disclosures have been posted. For example, under § 205.8(a), financial institutions offering accounts with EFT services must provide a change-in-terms notice at least 21 days in advance of certain changes. For a change-in-terms notice posted on the Internet, an institution must both post the notice and notify consumers of its availability at least 21 days in advance of the change. Comment 17(b)–4 contains this guidance.

Certain disclosures must be provided before the consumer contracts for an EFT service, or before the first electronic fund transfer. Because the disclosures are not required to be segregated and may be interspersed into the text of another document, the institution may satisfy the requirement to provide the disclosures if the document appears automatically or via a nonbypassable link. For example, when the financial institution permits the consumer to open an account on-line and initiate an EFT transaction immediately thereafter, the consumer must be required to access the disclosures (or the document containing the disclosures such as a checking account agreement) required under § 205.7 before the first transaction. A link to the disclosures satisfies the timing rule if the consumer cannot bypass the disclosures before contracting or making the first transfer. 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.

Some industry commenters believed that requiring disclosures to automatically appear or be accessed by the consumer 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 consumer.

EFTA and Regulation E require that financial institutions provide, send, or deliver disclosures to consumers. It is not sufficient for institutions to provide a bypassable navigational tool that merely gives consumers the option of receiving the disclosures. Such an approach reduces the likelihood that consumers will notice and receive the disclosures. The final rule ensures that consumers actually see disclosures provided electronically so that they have the opportunity to read them before entering into an agreement for EFT services.

Commenters requested guidance regarding the financial institution's duty in cases where an institution cannot provide timely disclosures because an electronic terminal or other automated equipment controlled by the institution malfunctions or otherwise fails to operate properly. Where the institution controls the equipment and disclosures are required at that time, an institution might not be liable for failing to provide timely disclosures if the defense in section 915(c) of EFTA is available.

Providing Disclosures in a Form the Consumer May Keep

Under EFTA and Regulation E, many of the disclosures required to be in writing must be in a form the consumer can retain. Electronic disclosures are subject to this requirement. Comment 17(b)–5 contains this guidance on this requirement.

Consumers may communicate electronically with financial institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve EFTA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to access and retain the disclosures, the financial institution also must send them to the consumer's designated e-mail address or make them available at another location, for example, on the financial institution's Internet web site, where the information may be retrieved at a later date.

Where the financial institution controls the equipment providing the electronic disclosures (for example, an automated teller machine or computer terminal located in the financial institution's lobby), the financial institution must ensure that the consumer has the opportunity to retain the required information. Comment 17(b)–6 contains guidance on this requirement.

17(c) Address or Location To Receive Electronic Communication

Consistent with the 1999 proposals, the interim rule provides that financial institutions may deliver electronic disclosures by sending them to a consumer's e-mail address. Alternatively, the rule provides that financial institutions may make the disclosures available at another location such as an Internet web site. If the financial institution makes a disclosure available at such a location, the financial institution effectively delivers the disclosure by sending a notice alerting the consumer 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 an institution's Internet web site under the interim rule differs from the 1999 proposals, based on commenters' concerns as discussed below.

17(c)(1)

For purposes of § 205.17(c), a consumer's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the financial institution, as proposed. This guidance is contained in comment 17(c)(1)–1. An electronic address would not include systems that permit communication only between the consumer and the financial institution, for example, home-banking programs that allow consumers to communicate directly with a financial institution on-line with the use of a computer and modem. These systems, like a financial institution's web site accessed via the Internet, give consumers access to information about their accounts at a location controlled by the institution. In both cases, the institution determines how long account information will be available to the consumer. Consumers who receive

disclosures at their e-mail address, however, may choose when to review, and for how long to retain, account information. Consumers who receive disclosures by contacting a financial institution's site need to be alerted when the information is first available in order to ensure that they have the opportunity to access the information before it is removed. 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 consumer when disclosures are posted must be sent, by e-mail or to a postal address, at the financial institution's option.

17(c)(2)

Under § 205.17(c)(2)(i) of the interim rule, for disclosures made available at an Internet web site, a notice alerting the consumer when disclosures are posted must be sent by e-mail (or to a postal address, at the institution's option). Section 205.17(c)(2)(i) requires that the alert notice identify the account involved and the address or other location where the disclosure is available. Comment 17(c)(2)–1 provides guidance on the level of detail required in identifying the account.

As proposed, under § 205.17(c)(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 consumers have adequate time to access and retain a disclosure under a variety of circumstances, such as when a consumer may not be able for an extended period of time to access the information due to computer malfunctions, travel, or illness. Making the periodic statement disclosure available for 90 days also ensures that it will be available a sufficient time in most cases to allow alleged errors to be resolved under the procedures in Regulation E. The 90-day period is uniform for all disclosures, for ease of compliance. Comment 17(c)(2)–2 is added to provide that during this period, the actual disclosures must be available to the consumer, but the financial institution 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 was 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 1999 proposals provided that after the 90-day time period, disclosures would be available upon consumers' request, generally for 24 months, in the same format as initially provided to the consumer. The 24-month period is consistent with a financial institution's duty to retain records that evidence 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 consumer.

Industry commenters strongly opposed the 24-month period. Many believed that keeping copies of electronic disclosures actually provided to consumers for that period of time would be costly and burdensome. Moreover, industry commenters believed that once a consumer has accessed the disclosures, the consumer rather than the financial institution should have the duty to retain them for future reference. They also noted that under existing record retention requirements applicable to paper disclosures, a financial institution need only demonstrate compliance with the rules, but need not retain copies of the actual disclosures provided to consumers.

The requirement for financial institutions to provide duplicate disclosures upon request for 24 months has not been adopted. A financial institution's duty to retain evidence of compliance for 24 months remains unchanged.

17(d) 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 financial institutions 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 consents electronically, in a manner that reasonably demonstrates they can access the information that the financial institution 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 institution. After the consumer consents, the E-Sign Act also requires institutions 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 all disclosures would not be warranted. When electronic disclosures are returned undelivered, however, § 205.17(d) imposes a duty to attempt redelivery (either electronically or to a postal address) based on address information in the institution's own files. Unlike paper disclosures delivered by the postal service, there generally is no commonly-accepted mechanism for reporting a change in electronic address or for forwarding e-mail. Where an institution actually knows that the delivery of an electronic disclosure did not take place, the institution should take reasonable steps to effectuate delivery in some way. For example, if an e-mail message to the consumer (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if the institution sends the disclosure to a different e-mail address or postal address that the institution has on file. Sending the disclosures a second time to the same electronic address would not be sufficient if the institution has a different address for the consumer on file. Comment 17(d)–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 consumer due to technical problems with the consumer's software. A financial institution's duty to redeliver a disclosure under § 205.17(d) does not affect the timeliness of the disclosure. Financial institutions 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 financial institution is required under § 205.17(d) to take reasonable steps to attempt redelivery.

17(e) Persons Other Than Financial Institutions

Certain provisions of Regulation E apply to entities that are not financial institutions. For example, where preauthorized electronic fund transfers from a consumer's account are recurring but will vary in amount each time, advance written notice is required; the notice may be given by the designated payee instead of the financial institution. The rule clarifies that entities other than a financial institution that are required to comply with Regulation E may use electronic communication to do so, provided the requirements of § 205.17(b) are satisfied. See § 205.17(e) and comment 17(e)–1.

Additional Issues

1. 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.

2. Technical Amendments to Error Resolution Notices

Model error resolution notices contained in Appendix A (Forms A–3 and A–5) have been revised to conform with amendments to § 205.11 addressing time periods for investigating alleged errors involving new accounts and point-of-sale and foreign-initiated transactions (63 FR 52115, September 29, 1998), and to make other technical changes.

V. Form of Comment Letters

Comment letters should refer to Docket No. R–1041, 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 E, in accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 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 financial institutions with an alternative method of providing disclosures; the rule will relieve compliance burden by giving financial institutions 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 7100–0200.

The collection of information that is revised by this rulemaking is found in 12 CFR Part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of the Regulation E and the Electronic Fund Transfer Act (EFTA). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of financial institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The revisions provide that financial institutions may deliver disclosures electronically upon obtaining consumers' affirmative consent in accordance with the E-Sign Act. The

revisions provide guidance to institutions on the timing and delivery of electronic disclosures, to ensure that consumers have adequate opportunity to access and retain the information.

With respect to state member banks, it is estimated that there are 954 respondent/recordkeepers and an average frequency of 85,808 responses per respondent each year. The current annual burden is estimated to be 518,857 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 comments 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 205

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

For the reasons set forth in the preamble, the Board amends Regulation E, 12 CFR part 205, as set forth below:

PART 205 ELECTRONIC FUND TRANSFERS (REGULATION E)

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

Authority: 15 U.S.C. 1693–1693r.

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

§ 205.4 General disclosure requirements; jointly offered services.

(a)(1) *Form of disclosures.* * * *

(2) *Foreign language disclosures.* Disclosures required under this part may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.

* * * * *

(c) *Electronic communication.* For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see § 205.17.

* * * * *

3. Add a new § 205.17 to read as follows:

§ 205.17 Requirements for electronic communication.

(a) *Definition. Electronic communication* means a message transmitted electronically between a financial institution and a consumer in a format that allows visual text to be displayed on equipment, 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 financial institution may provide by electronic communication any disclosure required by this part to be in writing.

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

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

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

(i) Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the financial institution'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 consumer of the disclosure, whichever comes later.

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

(e) *Persons other than financial institutions.* Persons other than a financial institution that are required to comply with this part may use electronic communication in accordance with the requirements of § 205.17, as applicable.

4. Appendix A to Part 205 is amended by revising Model Forms A–3 and A–5, to read as follows:

Appendix A To Part 205—Model Disclosure Clauses and Forms

* * * * *

A–3—Model Forms for Error Resolution Notice (§§ 205.7(b)(10) and 205.8(b))

(a) *Initial and annual error resolution notice (§§ 205.7(b)(10) and 205.8(b)).*

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] Write us at [insert address] [or E-mail us at [insert electronic mail address]] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

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

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

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

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

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

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

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

(b) *Error resolution notice on periodic statements (§ 205.8(b)).*

* * * * *

A–5—Model Forms for Government Agencies (§ 205.15(d)(1) and (2))

(a) *Disclosure by government agencies of information about obtaining account*

balances and account histories (§ 205.15(d)(1)(i) and (ii)).

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)][when you make a balance inquiry at an ATM][when you make a balance inquiry at specified locations].

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

(b) *Disclosure of error resolution procedures for government agencies that do not provide periodic statements (§ 205.15(d)(1)(iii) and (d)(2)).*

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] Write us at [insert address] [or E-mail us at [insert electronic mail address]] as soon as you can, if you think an error has occurred in your [EBT][agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

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

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

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

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

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

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

5. In Supplement I to Part 205, a new Section 205.17 is added, to read as follows:

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.17—Requirements for Electronic Communication

17(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 readily understandable standard. For example, to satisfy the clear and readily understandable standard for disclosures, electronic disclosures must use visual text.

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

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

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

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

3. *Timing and effective delivery when a consumer signs up for an EFT service on-line.* When a consumer contracts for an EFT service on the Internet and will be able immediately to initiate a fund transfer, a financial institution satisfies the timing requirements under this part if, at the time the consumer contracts for the service or before the first transfer is made, the disclosures automatically appear on the screen, even if multiple screens are required to view the entire disclosure. Or a financial institution may provide a link to electronic disclosures, as long as consumers cannot bypass the link and they are required to access the disclosures before initiating the first transfer. The institution is not required to confirm that the consumer has read the disclosures.

4. *Timing and effective delivery for disclosures provided periodically.* Disclosures provided by e-mail are timely based on when the disclosures are sent. Disclosures posted at an Internet web site, such as periodic statements or change-in-terms and other notices, are timely when the financial institution has both made the disclosures available and sent a notice alerting the consumer that the disclosures have been posted. For example, under § 205.8(a), institution offering accounts with EFT services must provide a change-in-terms notice to consumers at least 21 days in advance of certain changes. For a change-in-terms notice posted on the Internet, an institution must both post the notice and notify consumers of its availability at least 21 days in advance of the change.

5. *Retainability of disclosures.* Financial institutions satisfy the requirement that disclosures be in a form that the consumer 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.

6. *Disclosures provided on financial institution's equipment.* A financial institution that controls the equipment providing electronic disclosures to consumers (for example, an ATM or computer terminal in a financial institution's lobby) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and readily understandable format and in a form that the consumer may keep. For example, if disclosures are required at the time of an on-line transaction, the disclosures must be sent to the consumer's e-mail address or must be made available at another location such as the financial institution's Internet web site, unless the financial institution provides a printer that automatically prints the disclosures.

17(c) Address or Location To Receive Electronic Communication

Paragraph 17(c)(1)

1. *Electronic address.* A consumer's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the financial institution.

Paragraph 17(c)(2)

1. *Identifying account involved.* A financial institution 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 consumer has only one checking account, and no confusion would result, the institution may refer to ''your checking account.'' If the consumer has two checking accounts, the institution may, for example, differentiate accounts based on names for different checking account programs or by using a truncated account number.

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

17(d) Redelivery

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

17(e) Persons Other Than Financial Institutions

1. *Electronic disclosures.* Entities other than financial institutions, such as merchants, are subject to certain provisions of Regulation E, including §§ 205.10(b) and (d). These entities too may use electronic communication to provide disclosures required to be in writing.

By order of the Board of Governors of the Federal Reserve System, March 27, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–8151 Filed 4–3–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1044]

Truth in Savings

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 DD, which implements the Truth in Savings 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 the information. (Similar rules are being adopted under other consumer financial services and fair lending regulations administered by the Board.) Under the rule, depository institutions may deliver disclosures electronically if they obtain consumers' affirmative consent in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Amendments are also adopted that address electronic advertisements. The rule is being adopted as an interim rule to obtain additional public comment. An interim rule published in 1999, before enactment of the E-Sign Act, is withdrawn.

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–1044, 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: Jane E. Ahrens, Senior Counsel, and Deborah J. Stipick, Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667.

SUPPLEMENTARY INFORMATION:

I. Background

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

TISA and Regulation DD require a number of disclosures to be provided in writing, presuming that depository institutions provide paper documents. Under the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*), 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 DD (63 FR 14533), and other financial services and fair lending 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 creditors, depository institutions, 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