



FEDERAL RESERVE BANK OF DALLAS

2200 N. PEARL ST.
DALLAS, TX 75201-2272

December 29, 2003

Notice 03-70

TO: The Chief Executive Officer of each
financial institution and bank holding company
in the Eleventh Federal Reserve District

SUBJECT

**Proposed Amendments to Regulation B
(*Equal Credit Opportunity*); Regulation E (*Electronic Fund Transfers*);
Regulation M (*Consumer Leasing*); Regulation Z
(*Truth in Lending*); Regulation DD (*Truth in Savings*)**

DETAILS

The Board has requested public comments on a proposal to amend Regulation B, which implements the Equal Credit Opportunity Act, and the staff commentary to the regulation. Regulation B would be revised to define more specifically the standard for providing “clear and conspicuous” disclosures and to provide a more uniform standard among the Board’s regulations. The staff commentary would be revised to include examples of how to meet this standard. Comments should refer to Docket No. R-1168.

The Board has requested public comment on a proposal to amend Regulation E, which implements the Electronic Fund Transfers Act, and the staff commentary to the regulation. Regulation E would be revised to require disclosures to be “clear and conspicuous” and to define more specifically the standard to provide a more uniform standard among the Board’s regulations. Comments should refer to Docket No. R-1169.

The Board has also proposed to amend Regulation M, which implements the Consumer Leasing Act, and the staff commentary to the regulation. Regulation M would be revised to define more specifically the standard for providing “clear and conspicuous” disclosures and to provide a more uniform standard among the Board’s regulations. Comments should refer to Docket No. R-1170.

The Board has also requested public comment on a proposal to amend Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation. Regulation Z would be revised to define more specifically the standard for providing “clear and conspicuous” disclosures and to provide a more uniform standard among the Board’s regulations. The staff commentary would be revised to include examples of how to meet this standard.

Also, the Board has requested comment on a proposal to add an interpretative rule of construction to state that the word “amount” represents a numerical amount throughout Regulation Z. The proposed updates to the staff commentary also provide guidance on consumers’ exercise of the right to rescind certain home-secured loans. In addition, the proposal includes several technical revisions to the staff commentary. Comments should refer to Docket No. R-1167.

Finally, the Board has requested public comment on a proposal to amend Regulation DD, which implements the Truth in Savings Act, and the staff commentary to the regulation. Regulation DD would be revised to define more specifically the standard for providing “clear and conspicuous” disclosures and to provide a more uniform standard among the Board’s regulations. The staff commentary would be revised to include examples of how to meet this standard. Comments should refer to Docket No. R-1171.

The revisions to Regulations B, E, M, Z, and DD are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

All comments must be received on or before January 30, 2004. Please address comments to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Also, you may mail comments electronically to regs.comments@federalreserve.gov.

ATTACHMENTS

Copies of the Board’s notices as they appear on pages 68786–802, Vol. 68, No. 237 of the *Federal Register* dated December 10, 2003, are **attached**.

MORE INFORMATION

For more information, please contact Eugene Coy, Banking Supervision Department, at (214) 922-6201. Paper copies of this notice or previous Federal Reserve Bank notices can be printed from our web site at www.dallasfed.org/banking/notices/index.html.

Proposed Rules

Federal Register

Vol. 68, No. 237

Wednesday, December 10, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-1168]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation B, which implements the Equal Credit Opportunity Act, and the staff commentary to the regulation. Regulation B would be revised to define more specifically the standard for providing “clear and conspicuous” disclosures, and to provide a more uniform standard among the Board’s regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations E, M, Z and DD appear elsewhere in today’s **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R-1168 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452-3819 or 452-3102. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to

§ 261.12, except as provided in § 261.14, of the Board’s Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Minh-Duc Le, Senior Attorney, and David A. Stein, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of the applicant’s national origin, marital status, religion, sex, color, race, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*).

In addition to a general prohibition against discrimination, the regulation contains specific rules concerning: the taking and evaluation of credit applications, how credit history information is reported on accounts used by spouses, procedures and notices for credit denials and other adverse action, and limitations on requiring signatures of persons other than the applicant on credit documents. The act also exempts certain types of credit (such as securities credit) from some requirements, and provides model forms for optional use by creditors. The ECOA is implemented by the Board’s Regulation B (12 CFR part 202). An official staff commentary interprets the requirements of Regulation B (12 CFR part 202 (Supp. I)).

II. Proposed Revisions

Section 202.2—Definitions

2(bb) Clear and Conspicuous

The ECOA does not address a standard for the form of disclosures. Regulation B, however, requires creditors to disclose information provided in writing in a clear and conspicuous manner. *See* § 202.4(d). Guidance on how creditors may comply with the clear and conspicuous standard

is contained in the staff commentary. *See* comment 4(d)-1.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be “clear and conspicuous” under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and “clear and readily understandable” under Regulation E (Electronic Fund Transfers). In interpreting the “clear and conspicuous” standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be “in a reasonably understandable” form; similarly, under Regulation DD disclosures must be in a format that allows consumers “to readily understand the terms of their account.” For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be “readily noticeable to the consumer.” In contrast, the Board’s Regulation P (Privacy of Consumer Financial Information) defines the “clear and conspicuous” standard to mean that a disclosure is “reasonably understandable and designed to call attention to the nature and significance of the information” in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation B by adding a definition of “clear and conspicuous” in § 202.2(bb), consistent with the “clear and conspicuous” definition in Regulation P. The staff commentary to Regulation B also would be revised to add comments 2(bb)-1 and -2, consistent with Regulation P’s examples of how to meet the clear and conspicuous standard. Similar proposed

revisions to Regulations E, M, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Comment 2(bb)–3 would be added to clarify that the “clear and conspicuous” standard does not prohibit adding other terms to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(bb)–3 also would clarify, however, that the presence of other information may be a factor in determining whether the “clear and conspicuous” standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the “clear and conspicuous” standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). See proposed comment 2(bb)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement.

To eliminate redundancy with proposed § 202.2(bb) and its accompanying commentary, the Board also proposes to revise comment 4(d)–1. Guidance regarding the “clear and conspicuous” standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1168 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed

electronically to regs.comments@federalreserve.gov.

IV. Solicitation of Comments Regarding the Use of “Plain Language”

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

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation B. The proposed amendments are not expected to have any significant impact on small entities. 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 rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0201.

The collection of information that is revised by this rulemaking is found in 12 CFR part 202. This collection is mandatory to evidence compliance with the requirements of 15 U.S.C. 1691b(a)(1) and Pub. L. 104–208, § 2302(a), and also to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance income, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et seq.*).

Regulation B applies to all types of creditors, not just state member banks. However, under the Paperwork Reduction Act, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Federal Reserve. Appendix A of Regulation B defines these creditors as state member banks, branches and agencies of foreign banks

(other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other agencies account for the paperwork burden for the institutions they supervise. Creditors are required to retain records for 12 to 25 months as evidence of compliance.

The proposed revisions would provide creditors with a more uniform definition of providing “clear and conspicuous” disclosures and examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation B and the staff commentary, it is expected that these revisions would not increase the paperwork burden of creditors. The estimated annual burden for entities supervised by the Federal Reserve is approximately 175,711 hours for the 1,312 creditors that are “respondents” for purposes of the Paperwork Reduction Act.

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.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Consumer protections, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and record keeping requirements, Sex discrimination.

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

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

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

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.2 is amended by adding a new paragraph (bb) to read as follows:

§ 202.2 Definitions.

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

* * * * *

(bb) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

* * * * *

3. In Supplement I to Part 202:

a. Under *Section 202.2 Definitions*, a new paragraph title 2(bb) *Clear and conspicuous* is added, and new paragraphs (bb) 1. through (bb) 3. are added.

b. Under *Section 202.4—General Rules*, under 4(d) *Form of Disclosures*, paragraph 1. is revised.

Supplement I to Part 202—Official Staff Interpretations

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Section 202.2 Definitions

* * * * *

2(bb) Clear and Conspicuous

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

- i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;
- ii. Use short explanatory sentences or bullet lists whenever possible;
- iii. Use definite, concrete, everyday words and active voice whenever possible;
- iv. Avoid multiple negatives;
- v. Avoid legal and highly technical business terminology whenever possible; and
- vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

- i. Use a plain-language heading to call attention to the disclosure;
- ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;
- iii. Provide wide margins and ample line spacing;
- iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. *Other information.* Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.

* * * * *

Section 202.4—General Rules

* * * * *

4(d) Form of Disclosures

1. *Clear and conspicuous.* See § 202.2(bb) and accompanying comments.

[This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.]

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated: November 25, 2003.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 03–29942 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1169]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation E, which implements the Electronic Fund Transfers Act, and the staff commentary to the regulation. Regulation E would be revised to require disclosures to be “clear and conspicuous” and to define more specifically the standard to provide a more uniform standard among the Board’s regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, M, Z and DD appear elsewhere in today’s **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in

connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R–1169 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to

regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452–3819 or 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board’s Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Daniel Lonergan, Counsel, and Ky Tran-Trong, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Electronic Fund Transfers Act (EFTA), 15 U.S.C. 1693 *et seq.*, is to provide a basic framework for establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking program. The act and regulation require disclosure of terms and conditions of an EFT service; documentation of electronic transfers 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. Further, the act and regulation prescribe restrictions on the unsolicited issuance of ATM cards and other access devices. The EFTA is implemented by the Board’s Regulation E (12 CFR part 205). An Official Staff

Commentary interprets the requirements of Regulation E (12 CFR part 205 (Supp. I)).

II. Proposed Revisions

Section 205.2—Definitions

2(n) Clear and Conspicuous

Section 905(a) of the EFTA requires that disclosures be provided to consumers in readily understandable language. *See* 15 U.S.C. 1693c(a). The EFTA also requires that certain information about EFTs be “clearly” set forth on periodic statements and receipts from an electronic terminal. *See* 15 U.S.C. 1693d(a) and (c). This standard is implemented as “clear and readily understandable” in Regulation E. *See* § 205.4(a)(1).

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be “clear and conspicuous” under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and “clear and readily understandable” under Regulation E (Electronic Fund Transfers). In interpreting the “clear and conspicuous” standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be “in a reasonably understandable” form; similarly, under Regulation DD disclosures must be in a format that allows consumers “to readily understand the terms of their account.” For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be “readily noticeable to the consumer.” In contrast, the Board’s Regulation P (Privacy of Consumer Financial Information) defines the “clear and conspicuous” standard to mean that a disclosure is “reasonably understandable and designed to call attention to the nature and significance of the information” in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides a series of examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

For the reasons set forth below and pursuant to its authority under sections 904(a) and 904(c) of the EFTA, the Board proposes to conform the general disclosure standard under Regulation E to “clear and conspicuous.” Further, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to

amend Regulation E by adding a definition for clear and conspicuous in § 205.2(n), consistent with the “clear and conspicuous” definition in Regulation P. The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. The staff commentary to Regulation E also would be revised to add comments 2(n)-1 and -2, consistent with Regulation P’s examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, M, Z and DD appear elsewhere in today’s **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Additional information may accompany disclosures required under Regulation E. *See* § 205.4(b). Comment 2(n)-3 further clarifies that the “clear and conspicuous” standard does not prohibit adding other items to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(n)-3 would clarify, however, that the presence of other information may be a factor in determining whether the “clear and conspicuous” standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard. A new comment 4(b)-1 would be added to cross reference guidance in proposed comment 2(n)-3.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the “clear and conspicuous” standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(n)-2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

4(a)(1) Form of Disclosures

Under Section 905(a) of the EFTA, the terms and conditions of electronic fund transfers (EFTs) involving a consumer’s account must be disclosed in “readily understandable” language. *See* 15 U.S.C. 1693c(a). The EFTA also requires that certain information about EFTs be “clearly” set forth on periodic statements and receipts from an electronic terminal. *See* 15 U.S.C. 1693d(a) and (c). These standards have been implemented as a general disclosure standard of “clear and readily understandable.” *See* § 205.4(a)(1). The Board proposes to revise that standard to “clear and conspicuous.”

Regarding the standard of “clear” disclosures, the Board believes there is not a significant distinction between the term “readily understandable” as currently contained in section 905(a) of the EFTA and § 205.4(a)(1) of Regulation E and the term “reasonably understandable” as found in the guidance on the “clear” standard in other consumer protection regulations and in proposed § 205.2(n), and with the proposed revision, no substantive difference is intended. Regarding the standard of “conspicuous” disclosures, the Board believes that disclosures provided under the EFTA, like those provided under the other consumer financial services laws administered by the Board, should not only be clear, but also conspicuous, that is, noticeable to consumers to be effective.

The Board is authorized to prescribe regulations that contain provisions that in the judgment of the Board are necessary or proper to effectuate the purposes of the EFTA. *See* 15 U.S.C. 1693b(a) and (c). Thus, the proposed revisions would ensure that consumers receive disclosures of the terms and conditions of EFTs involving their account in a form that allows them to effectively exercise their rights under the EFTA and Regulation E. The Board proposes to exercise its authority under sections 904(a) and 904(c) of the EFTA to amend § 205.4(a)(1) to provide that disclosures required under Regulation E must be “clear and conspicuous” and consistent with the standard contained in other consumer protection regulations. Comment 4(a)-1 would be revised to conform to the amended disclosure standard. Guidance regarding the “clear and conspicuous” standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing

specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R-1169 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to regs.comments@federalreserve.gov.

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

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

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation E. The proposed amendments are not expected to have any significant impact on small entities. 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 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. This collection is mandatory (15 U.S.C. 1693 et seq.) to evidence compliance with the requirements of Regulation E and the Electronic Fund Transfer Act (EFTA). The respondents and recordkeepers are financial institutions. Institutions are required to retain records for twenty-four months. Regulation E 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 paperwork associated with the regulation only for the financial institutions it regulates and that meet the criteria set forth in the regulation. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would require disclosures to be provided "clearly and conspicuously." The proposed revisions would provide financial institutions with a more uniform definition for "clear and conspicuous" disclosures and provide examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation E and the staff commentary, it is expected that these revisions would not increase the paperwork burden of financial institutions. With respect to state member banks, it is estimated that there are 1,289 respondents and recordkeepers. Current annual burden is estimated to be 48,868 hours.

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.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0200), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

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

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

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

Authority: 15 U.S.C. 1693 et seq.

2. Section 205.2 is amended by adding a new paragraph (n) to read as follows:

§ 205.2 Definitions

For purposes of this part, the following definitions apply:

* * * * *

(n) Clear and conspicuous means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

* * * * *

3. Section 205.4 is amended by revising paragraph (a)(1) to read as follows:

§ 205.4 General disclosure requirements; jointly offered services

(a)(1) Form of disclosures. Disclosures required under this part shall be [clear and readily understandable] clear and conspicuous, in writing, and in a form the consumer may keep. A financial institution may use commonly accepted or [readily understandable] clear and conspicuous abbreviations in complying with the disclosure requirements of this part.

* * * * *

4. In Supplement I to Part 205: a. Under Section 205.2—Definitions, a new paragraph title 2(n) Clear and conspicuous is added, and new paragraphs (n) 1. through (n) 3. are added.

b. Under Section 205.4—General Disclosure Requirements; Jointly Offered Services, under 4(a) Form of Disclosures, paragraph 1. is revised.

c. Under Section 205.4—General Disclosure Requirements; Jointly Offered Services, a new paragraph title 4(b) Additional information; disclosures required by other laws is added, and a new paragraph 1. is added.

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.2—Definitions

* * * * *

2(n) Clear and Conspicuous

1. Reasonably understandable. Examples of disclosures that are reasonably understandable include disclosures that:

- i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;
ii. Use short explanatory sentences or bullet lists whenever possible;
iii. Use definite, concrete, everyday words and active voice whenever possible;
iv. Avoid multiple negatives;
v. Avoid legal and highly technical business terminology whenever possible; and
vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. Designed to call attention. Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

- i. Use a plain-language heading to call attention to the disclosure;
- ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;
- iii. Provide wide margins and ample line spacing;
- iv. Use boldface or italics for key words; and
- v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. *Other information.* Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.

* * * * *

Section 205.4—General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

1. *General.* See § 205.2(n) and accompanying comments. [Although no particular rules govern type size, number of pages, or the relative conspicuousness of various terms.] The disclosures must be in a [clear and readily understandable] clear and conspicuous written form that the consumer may retain. Numbers or codes are permissible [are considered readily understandable] if explained elsewhere on the disclosure form.

* * * * *

4(b) Additional Information; Disclosures Required by Other Laws

1. *Clear and conspicuous.* See comment 2(n)-3.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 03-29943 Filed 12-9-03; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R-1170]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation M, which implements the Consumer Leasing Act,

and the staff commentary to the regulation. Regulation M would be revised to define more specifically the standard for providing “clear and conspicuous” disclosures, and to provide a more uniform standard among the Board’s regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, Z and DD appear elsewhere in today’s **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R-1170 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to

regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452-3819 or 452-3102. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board’s Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel, and David A. Stein, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667-1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA requires lessors to provide lessees with uniform cost and other disclosures about certain consumer lease transactions. Disclosures are provided to consumers before they enter into lease transactions, when they renegotiate or extend a lease,

and in advertisements that state the availability of consumer leases on particular terms. The act and regulation generally apply 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 regulation. The CLA is implemented by the Board’s Regulation M (12 CFR part 213). An official staff commentary interprets the requirements of Regulation M (12 CFR part 213 (Supp. D)).

II. Proposed Revisions

Section 213.2—Definitions

2(q) Clear and Conspicuous

Section 182 of the CLA requires that lessors provide consumers with disclosures in a clear and conspicuous manner. See 15 U.S.C. 1667a. This standard is incorporated in Regulation M. See §§ 213.3(a) and 213.7(b). Guidance on how lessors may comply with the clear and conspicuous standard is contained in the staff commentary. See comments 3(a)-2 and 7(b)-1. The commentary states that under this standard, disclosures must be in a reasonably understandable form.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be “clear and conspicuous” under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and “clear and readily understandable” under Regulation E (Electronic Fund Transfers). In interpreting the “clear and conspicuous” standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be “in a reasonably understandable” form; similarly, under Regulation DD disclosures must be in a format that allows consumers “to readily understand the terms of their account.” For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be “readily noticeable to the consumer.” In contrast, the Board’s Regulation P (Privacy of Consumer Financial Information) defines the “clear and conspicuous” standard to mean that a disclosure is “reasonably understandable and designed to call attention to the nature and significance

of the information” in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation M by adding a definition for clear and conspicuous in § 213.2(q), consistent with the “clear and conspicuous” definition in Regulation P. The staff commentary to Regulation M also would be revised to add comments 2(q)–1 and –2, consistent with Regulation P’s examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, Z and DD appear elsewhere in today’s **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the “clear and conspicuous” standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). See proposed comment 2(q)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement. The proposal also would not affect other format rules, such as the existing requirement for segregating disclosures. See 12 CFR 213.3(a)(2).

To eliminate redundancy with proposed § 213.2(q) and its accompanying commentary, the Board also proposes to revise comment 3(a)–2 and 7(b)–1. Guidance regarding the “clear and conspicuous” standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1170 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to regs.comments@federalreserve.gov.

IV. Solicitation of Comments Regarding the Use of “Plain Language”

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

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation M. The proposed amendments are not expected to have any significant impact on small entities. 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 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 7100–0202.

The collection of information that is revised by this rulemaking is found in 12 CFR part 213. This collection is mandatory (15 U.S.C. 1667 *et seq.* and Pub. L. 104–208, 110 Stat. 3009) to evidence compliance with the requirements of Regulation M and the Consumer Leasing Act (CLA). The respondents are individuals or businesses that regularly lease, offer to lease, or arrange for the lease of personal property under a consumer lease. Records, required in order to evidence compliance with the regulation, must be retained for twenty-four months. Regulation M applies to all types of lessors of personal property, not just state member banks; however, under the

Paperwork Reduction Act regulations, the Federal Reserve accounts for the paperwork burden associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide lessors with a more uniform definition of providing “clear and conspicuous” disclosures and examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation M and the staff commentary, it is expected that these revisions would not increase the paperwork burden of lessors. With respect to state member banks, there are 310 respondents and recordkeepers. Current annual burden is estimated to be 11,179 hours for state member banks.

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.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and record keeping requirements, Truth in Lending.

For the reasons set forth in the preamble, the Board proposes to amend Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f.

2. Section 213.2 is amended by adding a new paragraph (q) to read as follows:

§ 213.2 Definitions.

For the purposes of this part the following definitions apply:

* * * * *

(q) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

3. In Supplement I to Part 213:

a. Under Section 213.2—*Definitions*, a new paragraph title 2(q) *Clear and conspicuous* is added, and new paragraphs (q)1. and (q)2. are added.

b. Under Section 213.3—*General Disclosure Requirements*, under 3(a) *General Requirements*, paragraph 2. is revised.

c. Under Section 213.7—*Advertising*, under 7(b) *Clear and Conspicuous Standard*, paragraph 1. is revised.

Supplement to Part 213—Official Staff Commentary to Regulation M

* * * * *

Section 213.2—Definitions

* * * * *

2(q) Clear and Conspicuous

1. *Reasonably understandable*. Examples of disclosures that are reasonably understandable include disclosures that:

- i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;
- ii. Use short explanatory sentences or bullet lists whenever possible;
- iii. Use definite, concrete, everyday words and active voice whenever possible;
- iv. Avoid multiple negatives;
- v. Avoid legal and highly technical business terminology whenever possible; and
- vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention*. Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

- i. Use a plain-language heading to call attention to the disclosure;
- ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;
- iii. Provide wide margins and ample line spacing;
- iv. Use boldface or italics for key words; and
- v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

* * * * *

Section 213.3—General Disclosure Requirements

3(a) General Requirements

* * * * *

2. *Clear and conspicuous standard*. See § 213.2(q) and accompanying comments. [The clear and conspicuous standard requires that disclosures be reasonably understandable. For example, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other; appendix A of this part contains model forms that meet this standard. In addition, although no minimum typesize is required, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.]

* * * * *

Section 213.7—Advertising

* * * * *

7(b) Clear and Conspicuous Standard

1. *Standard*. See § 213.2(q) and accompanying comments. [The disclosures in an advertisement in any media must be reasonably understandable. For example,] Very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear[-]and[-]conspicuous standard if consumers cannot see and read or hear, and cannot comprehend, the information required to be disclosed.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03-29944 Filed 12-9-03; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1167]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation. Regulation Z would be revised to define more specifically the standard for providing “clear and conspicuous” disclosures, and to provide a more uniform standard among the Board’s regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, M, and DD appear elsewhere in today’s **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the

regulations should facilitate compliance by institutions. The Board also is proposing to add an interpretative rule of construction to state that the word “amount” represents a numerical amount throughout Regulation Z. The proposed updates to the staff commentary also provide guidance on consumers’ exercise of the right to rescind certain home-secured loans. In addition, the proposal includes several technical revisions to the staff commentary.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R-1167 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452-3819 or 452-3102. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board’s Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy and Elizabeth A. Eurgubian, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors’ disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers’ homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors. TILA is implemented by the Board’s Regulation Z (12 CFR part 226). An official staff

commentary interprets the requirements of Regulation Z (12 CFR part 226 (Supp. I)).

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a)(27) Clear and Conspicuous

Section 122(a) of TILA requires disclosures to be made clearly and conspicuously. *See* 15 U.S.C. 1632. This standard is implemented in Regulation Z. *See* § 226.5(a)(1); § 226.17(a)(1); § 226.31(b). Guidance on how creditors may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comment 5(a)(1)–1; 17(a)(1)–1. The commentary states that under this standard, disclosures must be in a reasonably understandable form. For purposes of the disclosures provided with credit card solicitations and applications, the commentary also notes that disclosures must be readily noticeable to the consumer. *See* comment 5a(a)(2)–1.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be “clear and conspicuous” under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and “clear and readily understandable” under Regulation E (Electronic Fund Transfers). In interpreting the “clear and conspicuous” standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be “in a reasonably understandable” form; similarly, under Regulation DD disclosures must be in a format that allows consumers “to readily understand the terms of their account.” In contrast, the Board’s Regulation P (Privacy of Consumer Financial Information) defines the “clear and conspicuous” standard to mean that a disclosure is “reasonably understandable and designed to call attention to the nature and significance of the information” in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides a series of examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that

consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation Z by adding a definition for clear and conspicuous in § 226.2(a)(27), consistent with the “clear and conspicuous” definition in Regulation P. The staff commentary to Regulation Z also would be revised to add comments 2(a)(27)–1 and –2, consistent with Regulation P’s examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, M, and DD appear elsewhere in today’s **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Proposed comments 2(a)(27)–3 and –4 contain guidance currently in comment 5(a)(1)–1. The “clear and conspicuous” standard does not prohibit adding other items to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(a)(27)–3 would clarify, however, that the presence of other information may be a factor in determining whether the “clear and conspicuous” standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the “clear and conspicuous” standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(a)(27)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type size requirement. Similarly, the proposal also would not affect other format rules, such as the existing requirement for making some disclosures more conspicuous than others (*See* § 226.5(a)(2); § 226.17(a)(2)), or segregating some specific information (*See* § 226.17(a)(1)).

To eliminate redundancy with proposed § 226.2(a)(27) and its accompanying commentary, the Board also proposes to revise the following commentary provisions in Regulation Z that address the “clear and conspicuous” standard: comments 5(a)(1)–1, 5a(a)(2)–1, 16–1, 24–1, and Appendix K (d)(2)–1. In this regard, in comment 5a(a)(2)–1, the guidance regarding disclosures for credit card applications and solicitations that are transmitted by electronic communication, has been deleted. Guidance regarding the “clear and conspicuous” standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

2(b) Rules of Construction

The Board proposes to add an interpretative rule of construction in § 226.2(b)(5) stating that where the word “amount” is used to describe a disclosure requirement it refers to a numerical amount throughout Regulation Z. This interpretation addresses a matter discussed in a recent court decision regarding the disclosure of payments scheduled to repay a closed-end credit transaction. *See* 15 U.S.C. 1638(a)(6); 12 CFR 226.18(g). The Board believes that the decision, by endorsing narrative descriptions of amounts rather than numerical amounts, may lead to confusion in disclosures.

The term “amount” has general applicability throughout Regulation Z and the term “amount” is used throughout TILA, for example, to describe disclosures such as the amount financed, the amounts being disbursed to the consumer and to third parties, and the total of payments, which is defined as the amount the consumer will have paid after making all scheduled payments. A broad interpretation of the term suggesting that narrative descriptions may replace numerical “amounts” contravenes TILA’s purpose to provide consumers with clear and uniform credit disclosures. Proposed comment 2(b)–2 would provide examples of how the interpretative rule of construction for “amount” applies in certain disclosures required by Regulation Z.

Subpart B—Open-end Credit

Section 226.15—Right of Rescission

15(a) Consumer’s Right To Rescind 15(a)(2)

Section 125(a) of TILA provides that, in certain credit transactions in which

the consumer's principal dwelling secures an extension of credit, the consumer may rescind the transaction for three business days after becoming obligated on the debt (and for open-end plans, after opening or increasing the credit limit on the plan). See 15 U.S.C. 1635(a); 12 CFR 226.15(a)(1). The rescission period may extend up to three years in certain cases. The right of rescission was created to allow consumers time to reexamine their credit contracts and cost disclosures and to reconsider whether they want to place their home at risk by offering it as security for the credit. A consumer exercises the right to rescind by notifying the creditor of the rescission by mail, telegram, or other means of written communication. Creditors must provide consumers with a form to use in exercising the right to rescind, which must include the name and address of the creditor or agent of the creditor to receive the notice. See § 226.15(b). Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business. See § 226.15(a)(2).

Comment 15(a)(2)-1 states that a creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). The comment would be revised to address situations where a creditor fails to provide the required form or designate an address for sending the notice. The proposed comment would provide that in such cases, if a consumer sends the notice to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, the consumer's notice of rescission may be effective if under the applicable state law, delivery to that person would be deemed to constitute delivery to the creditor or assignee.

15(d) Effects of Rescission

When a consumer exercises the right to rescind a mortgage transaction, the consumer is not liable for any finance charges or other charges and any security interest in the consumer's home becomes void. See 15 U.S.C. 1635(b); § 226.15(d)(1). After the transaction is rescinded, the creditor must tender any money or property given to anyone in connection with the transaction within a specified time frame, which triggers the consumer's duty to return any money or property that the creditor delivered to the consumer, although a court may modify these procedures. See § 226.15(d)(2)-(4).

Comment 15(d)(4)-1 would be revised to state expressly that a consumer's substantive right to rescind under § 226.15(a)(1) and § 226.15(d)(1) is not affected by the procedures referred to in § 226.15(d)(2) and (3), or the modification of those procedures by a court. Accordingly, where consumers seek rescission and the matter is contested by the creditor, a determination regarding consumers' right to rescind would normally be made before a court determines the amounts owed and establishes the procedures for the parties to tender any money or property. The sequence of procedures should not affect consumers' ability under TILA to establish their substantive right to rescind and to have the lien amount reduced, which may be necessary before consumers are able to establish how they will refinance or otherwise repay the loan.

Subpart C—Closed-End Credit

Section 226.18—Content of Disclosures

18(c) Itemization of Amount Financed

A technical revision would be made to comment 18(c)(1)(iii)-1, to conform a citation to footnote 41 of Regulation Z. No substantive change is intended. Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions

Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. Guidance about the applicability of § 226.19 to construction loans was published in comment 19(b)-1. 54 FR 9422, March 7, 1989. That guidance has been inadvertently appended to comment 19(b)(1)-1 in the Code of Federal Regulations. The two comments are restated in their correct form for reprinting in the Code of Federal Regulations. No substantive change is intended.

Section 226.23—Right of Rescission

23(a) Consumer's Right To Rescind

For the reasons discussed above, comment 23(a)(2)-1 would be revised to state the rule for effective delivery of a rescission notice when the creditor fails to provide the required form or designate an address for sending the notice (See supplementary information to proposed comment 15(a)(2)-1.)

Section 226.23—Right of Rescission

23(d) Effects of Rescission

For the reasons discussed above, comment 23(d)(4)-1 would be revised to expressly state that a consumer's substantive right to rescind under § 226.23(a)(1) and § 226.23(d)(1) is not affected by the procedures referred to in § 226.23(d)(2) and (3), or the modification of those procedures by a court. (See supplementary information to proposed comment 15(d)(4)-1.)

Subpart D—Miscellaneous

Section 226.27—Language of Disclosures

In March 2001, the Board revised § 226.27 to permit creditors to provide disclosures in languages other than English as long as disclosures in English are available to consumers who request them. 66 FR 1739, March 30, 2001. Technical revisions would be made to comment 27-1, and comment 27-2 would be deleted to conform the commentary to § 226.27, as amended. No substantive change is intended.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

Rules for certain closed-end mortgage loans in § 226.32 are triggered, in part, by the amount of "points and fees" payable by the consumer at or before loan closing and the "total loan amount." See § 226.32(a)(1)(ii). Comment 32(a)(1)(ii)-1, which was added in 1996, provides examples for calculating the "total loan amount." 61 FR 14952, April 4, 1996. A technical revision would be made to comment 32(a)(1)(ii)-1, to correct a dollar amount given in one of the examples. No substantive change is intended.

Request for Information Regarding Debt Cancellation and Debt Suspension Agreements

Some lenders have replaced credit insurance products with products known as debt cancellation agreements and debt suspension agreements. Under a debt cancellation agreement or debt suspension agreement, a creditor agrees to cancel, or temporarily suspend, all or part of the borrower's repayment obligation upon the occurrence of a specified event, such as death, disability, or unemployment. The fee for a debt cancellation or debt suspension agreement can be collected monthly or in a lump sum.

At least one state has said it will regulate debt cancellation and

suspension products as insurance, other states have said they will regulate the products as bank products and not as insurance, and still others have not yet announced positions. The Office of the Comptroller of the Currency (OCC) has recently issued regulations governing sales of debt cancellation and suspension agreements by national banks. See 12 CFR 37.1 *et seq.*

Under the TILA and Regulation Z, debt cancellation agreements are generally subject to the same disclosure rules as credit insurance. In 1996, the Board revised Regulation Z to establish essentially identical disclosure rules for credit insurance and debt cancellation agreements. Accordingly, although debt cancellation fees satisfy the definition of a "finance charge," they may be excluded from the finance charge on the same conditions as credit insurance premiums (without regard to whether debt cancellation agreements are deemed to be insurance contracts under state law). The types of debt cancellation agreements eligible for the exclusion are limited to those that provide for cancellation of or all or part of a debtor's liability (1) in case of accident or loss of life, health, or income or (2) for amounts exceeding the value of collateral securing the debt (commonly referred to as "gap" coverage, frequently sold in connection with motor vehicle loans). See § 226.4(b)(7) and (10), 4(d)(1) and (3).

Industry representatives have asked the Board to address disclosure issues under TILA and Regulation Z that may be raised by the sale of debt cancellation and debt suspension products.

Anecdotal evidence suggests that the sale of those products in lieu of credit insurance has increased and that creditors are offering expanded coverage, for example to suspend repayment obligations for life-cycle events such as marriage and divorce. Some industry representatives have stated that additional guidance may be useful in clarifying the circumstances in which products offering expanded coverage qualify for the exclusions in § 226.4(d)(3) for debt cancellation fees, and in clarifying what disclosures should be provided to consumers in certain circumstances.

To consider the requests for guidance more fully, information and comment are solicited as follows:

- What are the similarities and differences among credit insurance, debt cancellation coverage, and debt suspension coverage, in the case of both closed-end and open-end credit?
- With what types of closed-end and open-end credit are debt cancellation and debt suspension products sold? Do

creditors typically package multiple types of coverage (e.g., disability and divorce), or sell them separately? Do creditors typically sell the products at, or after, consummation (for closed-end credit) or account opening (for open-end credit plans)?

- What disclosures are made with the sale of a product or upon conversion from one product to another, whether required by TILA or other laws? How are monthly or other periodic fees disclosed to consumers?

- Under Regulation Z, fees for credit protection programs written in connection with a credit transaction are finance charges but some fees may be excluded from the disclosed finance charge if required disclosures are made and the consumer affirmatively elects the optional coverage in writing. See § 226.4(b)(7) and (10), 4(d)(1) and (3). Is there a need for guidance concerning the applicability of those provisions to certain types of coverage now available? Are the required disclosures adequate for all types of products subject to § 4(d)(1) or 4(d)(3)?

- Under TILA, a credit card issuer must notify a consumer before changing the consumer's credit insurance provider. See 15 U.S.C. 1637(g); 12 CFR 226.9(f). Card issuers that intend to change credit insurance providers need only notify consumers that they may opt out of the new coverage. Should the Board interpret or amend § 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements? If so, is there a need to address conversions other than for credit card accounts?

- OCC regulations for national bank sales of debt cancellation and suspension agreements require a customer's affirmative election of the product. If the Board interprets or amends § 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements, what additional guidance would card issuers need, if any, to comply with both rules?

III. Form of Comment Letters

Comment letters should refer to Docket No. R-1167 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to regs.comments@federalreserve.gov.

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

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

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation Z. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the 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 7100-0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226. This collection is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The respondents and 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 creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide creditors with a more uniform definition of providing "clear and conspicuous" disclosures and examples of how to satisfy the "clear and conspicuous" standard. The proposed revisions also would provide that the term "amount" represents a numerical

amount throughout Regulation Z. The proposed updates to the staff commentary also provide guidance on consumers' exercise of rescission for certain home-secured loans. While the proposal would amend Regulation Z and the staff commentary, it is expected that these revisions would not increase the paperwork burden of creditors. With respect to state member banks, there are 1,312 respondents and recordkeepers. Current annual burden is estimated to be 618,398 hours.

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.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 226

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

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

PART 226—TRUTH IN LENDING (REGULATION Z)

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

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

2. Section 226.2 is amended by adding a new paragraph (a)(27) and adding a new paragraph (b)(5) to read as follows:

Subpart A—General

* * * * *

§ 226.2 Definitions and rules of construction.

(a) *Definitions.* For purposes of this regulation, the following definitions apply:

* * * * *

(27) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

* * * * *

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

* * * * *

(5) Where the word “amount” is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

- 3. In Supplement I to Part 226:
 - a. Under *Section 226.2 Definitions and Rules of Construction*, under 2(a) *Definitions*, a new paragraph title 2(a)(27) *Clear and conspicuous* is added, and new paragraphs (27) 1. through (27) 4. are added; and under 2(b) *Rules of Construction*, a new paragraph (b)2. is added.
 - b. Under *Section 226.5 General Disclosure Requirements*, under *Paragraph 5(a)(1)*, paragraph 1. is revised.
 - c. Under *Section 226.5a Credit and Charge Card Applications and Solicitations*, under *Paragraph 5a(a)(2)*, paragraph 1. is revised.
 - d. Under *Section 226.15 Right of Rescission*, under *Paragraph 15(a)(2), paragraph 1.* is revised, and under *Paragraph 15(d)(4)*, paragraph 1. is revised.
 - e. Under *Section 226.16 Advertising*, paragraph 1. is revised.
 - f. Under *Section 226.18 Content of Disclosures*, under *Paragraph 18(c)(1)(iii)*, paragraph 1. is revised.
 - g. Under *Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions*, under 19(b) *Certain variable-rate transactions*, paragraph 1. is revised, and under *Paragraph 19(b)(1)*, paragraph 1. is revised.
 - h. Under *Section 226.23 Right of Rescission*, under *Paragraph 23(a)(2)*, paragraph 1. is revised, and under *Paragraph 23(d)(4)*, paragraph 1. is revised.
 - i. Under *Section 226.24 Advertising*, paragraph 1. is revised.
 - j. Under *Section 226.27*, the section title is revised, paragraph 1. is revised, and paragraph 2. is removed and reserved.
 - k. Under *Section 226.32 Requirements for Certain Closed-End Home Mortgages*, under *Paragraph 32(a)(1)(ii)*, paragraph 1.ii. is revised.

l. Under *Appendix K—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transaction*, under (d) *Reverse mortgage model form and sample form*, under (d)(2), paragraph 1. would be revised.

Supplement I To Part 226—Official Staff Interpretations

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Subpart A—General

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Section 226.2—Definitions and Rules of Construction

2(a) *Definitions.*

* * * * *

- 2(a)(27) *Clear and conspicuous.*
 - 1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:
 - i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;
 - ii. Use short explanatory sentences or bullet lists whenever possible;
 - iii. Use definite, concrete, everyday words and active voice whenever possible;
 - iv. Avoid multiple negatives;
 - v. Avoid legal and highly technical business terminology whenever possible; and
 - vi. Avoid explanations that are imprecise and readily subject to different interpretations.
 - 2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:
 - i. Use a plain-language heading to call attention to the disclosure;
 - ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;
 - iii. Provide wide margins and ample line spacing;
 - iv. Use boldface or italics for key words; and
 - v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.
 - 3. *Other information.* Except as otherwise provided, the “clear and conspicuous” standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the “clear and conspicuous” standard is met.
 - 4. *Use of codes or symbols.* The “clear and conspicuous” standard does not prohibit using codes or symbols such as *APR* (for annual percentage rate), *FC* (for finance charge), or *Cr* (for credit balance), so long as

a legend or description of the code or symbol is provided on the disclosure statement.

* * * * *

2(b) Rules of Construction

* * * * *

2. Amount. A creditor would state a dollar amount when disclosing the amount financed, finance charge, or the amount of any payment for a closed-end transaction (Subpart C). A creditor might explain how the amount of any finance charge will be determined by stating a percentage (for example, where the fee is a percentage of each cash advance) or a dollar amount (for example, a minimum finance charge of \$1.00) in disclosures provided before the first transaction under an open-end plan (Subpart B).

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Subpart B—Open-End Credit

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Section 226.5—General Disclosure Requirements

5(a) Form of Disclosures

Paragraph 5(a)(1).

1. Clear and conspicuous. See § 226.2(a)(27) and accompanying comments. [The “clear and conspicuous” standard requires that disclosures be in a reasonably understandable form. Except where otherwise provided, the standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. (But see comments 5a(a)(2)–1 and –2 for special rules concerning section 226.5a disclosures for credit card applications and solicitations.) The standard does not prohibit:

- Pluralizing required terminology (finance charge and annual percentage rate).
- Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.
- Sending promotional material with the required disclosures.
- Using commonly accepted or readily understandable abbreviations (such as mo. for month or Tx. for Texas) in making any required disclosures.
- Using codes or symbols such as APR (for annual percentage rate), FC (for finance charge), or Cr (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.]

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General Rules

5a(a)(2) Form of Disclosures

1. Clear and conspicuous standard. See § 226.2(a)(27) and accompanying comments. [For purposes of § 226.5a disclosures, “clear and conspicuous” means in a reasonably understandable form and readily noticeable to the consumer. As to type size, disclosures

in 12-point type are deemed to be readily noticeable for purposes of section 226.5a. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard. Disclosures that are transmitted by electronic communication are judged for purposes of the clear-and-conspicuous standard based on the form in which they are provided even though they may be viewed by the consumer in a different form.]

* * * * *

Section 226.15—Right of Rescission

15(a) Consumer’s Right to Rescind

* * * * *

Paragraph 15(a)(2).

1. Consumer’s exercise of right. The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.15(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor’s performance under § 226.15(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent’s name and address appear on the notice provided to the consumer under § 226.15(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission and the consumer sends the notification to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor’s agent, state law determines whether delivery to that person constitutes delivery to the creditor or assignee.

* * * * *

15(d) Effects of Rescission

* * * * *

Paragraph 15(d)(4).

1. Modifications. The procedures outlined in § 226.15(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The consumer’s substantive right to rescind under § 226.15(a)(1) and § 226.15(d)(1) is not affected by the procedures referred to in § 226.15(d)(2) and (3), or the modification of those procedures by a court.

* * * * *

Section 226.16—Advertising

1. Clear and conspicuous standard. See § 226.2(a)(27) and accompanying comments. [Section 226.16 is subject to the general “clear and conspicuous” standard for subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.]

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Subpart C—Closed-End Credit

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Section 226.18—Content of Disclosures

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18(c) Itemization of Amount Financed

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Paragraph 18(c)(1)(iii).

1. Amounts paid to others. This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor’s option, be combined and listed in one sum, labeled “insurance” or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of insurance premiums paid to different companies. Except for insurance companies and other categories noted in footnote [40] 41, third parties must be identified by name.

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain Variable-Rate Transactions

1. Coverage. Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer’s principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial acquisition of the consumer’s principal dwelling, but also to any other closed-end variable-rate transaction secured by the principal dwelling. Closed-end variable-rate transactions that are not secured by the principal dwelling, or are secured by the principal dwelling but have a term of one year or less, are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b). (Furthermore, “shared-equity” or “shared-appreciation” mortgages are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b) regardless of the general coverage of those sections.) For purposes of this section, the term of a variable-rate demand loan is determined in accordance with the commentary to § 226.17(c)(5). In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer’s principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).

* * * * *

Paragraph 19(b)(1).

1. Substitute. Creditors who wish to use publications other than the Consumer Handbook on Adjustable Rate Mortgages must make a good faith determination that their brochures are suitable substitutes to the

Consumer Handbook. A substitute is suitable if it is, at a minimum, comparable to the *Consumer Handbook* in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the *Consumer Handbook*. [In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).]

* * * * *

Section 226.23—Right of Rescission

23(a) Consumer's Right To Rescind

* * * * *

Paragraph 23(a)(2).

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.23(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.23(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.23(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission and the consumer sends the notification to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, state law determines whether delivery to that person constitutes delivery to the creditor or assignee.

* * * * *

23(d) Effects of Rescission.

* * * * *

Paragraph 23(d)(4).

1. *Modifications.* The procedures outlined in § 226.23(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The consumer's substantive right to rescind under § 226.23(a)(1) and § 226.23(d)(1) is not affected by the procedures referred to in § 226.23(d)(2) and (3), or the modification of those procedures by a court.

* * * * *

Section 226.24—Advertising

1. *Clear and conspicuous standard.* See § 226.2(a)(27) and accompanying comments. On a merchandise tag that is an

advertisement under the regulation, a creditor is not prohibited under the "clear and conspicuous" standard from including the necessary credit terms on both sides of the tag, so long as each side is accessible. [This section is subject to the general "clear and conspicuous" standard for this subpart but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.]

* * * * *

Subpart D—Miscellaneous

* * * * *

Section 226.27—[Spanish] Language of Disclosures

1. *Subsequent disclosures.* If a creditor [in Puerto Rico] provides initial disclosures in [Spanish] a language other than English, subsequent disclosures need not be in [Spanish] that other language. For example, if the creditor gave Spanish-language initial disclosures, periodic statements and change-in-terms notices may be made in English.

2. [Removed and reserved.]

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 226.32—Requirements for Certain Closed-End Home Mortgages

* * * * *

Paragraph 32(a)(1)(ii).

1. *Total loan amount.* For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to section 226.18(b), and deducting any cost listed in section 226.32(b)(1)(iii) and section 226.32(b)(1)(iv) that is both included as points and fees under section 226.32(b)(1) and financed by the creditor. Some examples follow, each using a \$10,000 amount borrowed, a \$300 appraisal fee, and \$400 in points. A \$500 premium for optional credit life insurance is used in one example.

* * * * *

ii. If the consumer pays the \$300 fee for the creditor-conducted appraisal in cash at closing, the \$300 is included in the points and fees calculation because it is paid to the creditor. However, because the \$300 is not financed by the creditor, the fee is not part of the amount financed under section 226.18(b) [(\$10,000, in this case)]. In this case, the amount financed is the same as the total loan amount [is] \$9,600 (\$10,000, less \$400 in prepaid finance charges).

* * * * *

Appendix K—Total-Annual-Loan-Cost Rate Computations for Reverse-Mortgage Transactions

* * * * *

(d) Reverse-Mortgage Model Form and Sample Form

* * * * *

(d)(2) Sample Form

1. *General.* [The "clear and conspicuous" standard for reverse-mortgage disclosures does not require disclosures to be printed in any particular type size.] The "clear and conspicuous" standard applies to disclosures required by § 226.33. Disclosures may be made on more than one page, and use both the front and the reverse sides, as long as the pages constitute an integrated document and the table disclosing the total annual loan-cost rates is on a single page.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 03-29945 Filed 12-9-03; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R-1171]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation DD, which implements the Truth in Savings Act, and the staff commentary to the regulation. Regulation DD would be revised to define more specifically the standard for providing "clear and conspicuous" disclosures, and to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, M, and Z appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R-1171 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board

of Governors is subject to delay, please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452-3819 or 452-3102. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT:

Krista P. DeLargy and Elizabeth A. Eurgubian, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield (APY), the interest rate, and other account terms. The act and regulation require depository institutions to provide a consumer with disclosures upon request and before an account is opened. Institutions are not required to provide periodic statements; but if they do, the act and regulation require that fees, yields, and other information be provided on the statements. Notice must be given to accountholders before an adverse change in account terms occurs and prior to the renewal of certificates of deposit (time accounts). The TISA is implemented by the Board's Regulation DD (12 CFR part 230). An official staff commentary interprets the requirements of Regulation DD (12 CFR part 230 (Supp. I)).

II. Proposed Revisions

Section 230.2—Definitions

2(w) Clear and Conspicuous

Section 264(e) of TISA requires disclosures to be made in clear and plain language and presented in a format designed to allow consumers to readily understand the terms of the accounts offered. See 12 U.S.C. 4303(e). This standard is implemented in Regulation DD. See §§ 230.3(a) and 230.8(c). Guidance on how depository institutions may comply with the clear and conspicuous standard is contained in the staff commentary. See comment

3(a)–1. The commentary states that under this standard, disclosures must be in a readily understandable form.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be "clear and conspicuous" under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and "clear and readily understandable" under Regulation E (Electronic Fund Transfers). In interpreting the "clear and conspicuous" standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be "in a reasonably understandable" form; similarly, under Regulation DD disclosures must be in a format that allows consumers "to readily understand the terms of their account." For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be "readily noticeable to the consumer." In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the "clear and conspicuous" standard to mean that a disclosure is "reasonably understandable and designed to call attention to the nature and significance of the information" in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation DD by adding a definition of clear and conspicuous in § 230.2(w), consistent with the "clear and conspicuous" definition in Regulation P. The staff commentary to Regulation DD also would be revised to add comments 2(w)–1 and –2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, M and Z appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable

information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Additional information may accompany disclosures required under Regulation DD. See § 230.3(a), comment 6(a)–4. Proposed comment 2(w)–3 further clarifies that the "clear and conspicuous" standard generally does not prohibit adding other terms to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(w)–3 would clarify, however, that the presence of other information may be a factor in determining whether the "clear and conspicuous" standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the "clear and conspicuous" standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). See proposed comment 2(w)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement.

The Board also proposes to delete as unnecessary the guidance in comment 3(a)–1 and replace it with a cross-reference to § 230.2(w) and accompanying comments. Guidance regarding the "clear and conspicuous" standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R-1171 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to regs.comments@federalreserve.gov.

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

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

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation DD. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be prepared and will consider 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 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 7100-0271.

The collection of information that is revised by this rulemaking is found in 12 CFR part 230. This collection is mandatory (15 U.S.C. 4301 *et seq.*) to evidence compliance with the requirements of Regulation DD and the Truth in Savings Act (TISA). The respondents and recordkeepers are for-profit depository institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of depository institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide depository institutions with a more uniform definition for "clear and conspicuous" disclosures and provide examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation DD and the staff commentary, it is expected

that these revisions would not increase the paperwork burden of depository institutions. With respect to state member banks, it is estimated that there are 976 respondents and recordkeepers. Current annual burden is estimated to be 146,644 hours.

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.

Comments on the collection 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 sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer Protection, Federal Reserve System, Reporting and record keeping requirements, Truth in Savings.

For the reasons set forth in the preamble, the Board proposes to amend Regulation DD, 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. Section 230.2 is amended by adding a new paragraph (w) to read as follows:

§ 230.2 Definitions.

For the purposes of this regulation the following definitions apply:

* * * * *

(w) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

3. In Supplement I to Part 230:

a. Under Section 230.2 Definitions, a new paragraph title (w) *Clear and conspicuous* is added, and new paragraphs (w) 1. through (w) 3. are added.

b. Under Section 230.3 General disclosure requirements, under (a) *Form*, paragraph 1. is revised.

Supplement I to Part 230—Official Staff Interpretations

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Section 230.2 Definitions

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(w) *Clear and conspicuous*

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

- i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;
- ii. Use short explanatory sentences or bullet lists whenever possible;
- iii. Use definite, concrete, everyday words and active voice whenever possible;
- iv. Avoid multiple negatives;
- v. Avoid legal and highly technical business terminology whenever possible; and
- vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

- i. Use a plain-language heading to call attention to the disclosure;
- ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;
- iii. Provide wide margins and ample line spacing;
- iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. *Other information.* Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.

Section 230.3 General disclosure requirements

(a) *Form*

1. *Clear and conspicuous.* See § 230.2(w) and accompanying comments. [*Design Requirements.* Disclosures must be presented in a format that allows consumers to readily understand the terms of their account. Institutions are not required to use a particular type size or typeface, nor are institutions required to state any term more conspicuously than any other term. Disclosures may be made:

- i. In any order
- ii. In combination with other disclosures or account terms

iii. In combination with disclosures for other types of accounts, as long as it is clear to consumers which disclosures apply to their account

iv. On more than one page and on the front and reverse sides

v. By using inserts to a document or filling in blanks

vi. On more than one document, as long as the documents are provided at the same time.]

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By order of the Board of Governors of the Federal Reserve System

Dated: November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

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