AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

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Nessa E. Feddis
Senior Federal Counsel
Regulatory and Trust Affairs

Tel: (202)663-5433
Fax: (202)828-5052
nfeddis@aba.com

By electronic delivery

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Ms. Jennifer J. Johnson,
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Equal Credit Opportunity Act
Regulation B
Docket No. R-1281
72 Federal Register 21125, 30 April 2007

The American Bankers Association ("ABA") is pleased to submit our comments to the Federal Reserve Board's ("Board") request for comment on its proposed changes to Regulation B, which implements the Equal Credit Opportunity Act ("ECOA"). The Board is proposing to amend Regulation B to withdraw portions of the interim final rules for the electronic delivery of disclosures issued 30 March 2001. In addition, the Board is proposing to amend Regulation B to address the electronic delivery of communications and disclosures required under the ECOA and Regulation B.

ABA supports the Board's proposal to withdraw portions of the interim final rules for electronic delivery of disclosures. We agree with the Board that removing the interim rules will reduce confusion about the status of the provisions and simplify and make more flexible the regulation. In addition, we agree that creditors should be permitted to provide application and advertising materials without regard to the Electronic Signatures in Global and National Commerce Act ("the E-Sign Act") and other provisions of that Act. Finally, we recommend that the Board clarify that disclosures would be in compliance with the regulation if the disclosures would meet the regulation's requirements when viewed on a home personal computer.

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as

savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

Background and Proposal.

The Board in 2001 published interim rules permitting the electronic delivery of disclosures under Regulation B and proposals under E (Electronic Fund Transfers), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings). Under the interim rules, creditors and other persons generally were required to obtain consumers' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act.

Based on comments to the interim final rules, in August 2001, the Board lifted the previously established 1 October 2001 mandatory compliance date for all of the interim final rules. Thus, institutions are not required to comply with the interim final rules on electronic disclosures.

The Board is now proposing to amend Regulation B and the official staff commentary by:

1. withdrawing portions of the 2001 interim final rule on electronic disclosures that restate or cross-reference provisions of the E-Sign Act and are thus unnecessary;

2. withdrawing other portions of the interim final rule that may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection; and

3. retaining the substance of certain provisions of the interim final rule that provide regulatory relief or guidance regarding electronic disclosures.

Comments.

Section 202.4 General rules.
(d) Form of disclosures.

The proposal provides that certain disclosures, when included on or with an application, must be provided to the applicant in electronic form if the applicant accesses the application electronically. Under those circumstances, these disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. We agree with the Board that requiring creditors to obtain consumers' consent in order to provide applications information is unnecessary and inappropriate. A requirement to obtain the consumers' consent only slows consumers' shopping process, discouraging them from researching and comparing various credit options.

ABA suggests that the final regulation make clear that creditors would be in compliance with the regulation if the disclosures would comply when viewed on a home personal computer. ABA is concerned about how disclosures may be *received* by consumers. Disclosures may not meet some of the requirements of the regulation when viewed on the small screen of a mobile phone or other hand-held device. Creditors cannot control how consumers may choose to access the creditors' web site or communications. Accordingly, we recommend that regulation clarify, "Creditors meet the requirements of the regulation if the disclosures comply with the regulation when displayed on a home personal computer."

Section 202.16 Requirement for Electronic Communications.

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

The Board is proposing to delete this subpart. We agree. For the reasons explained in our comment letter to the interim final rule dated 5 June 2001, there are many reasons consumers may choose not have statements and other information delivered to an e-mail address. For example, for privacy or professional reasons, they might not want financial information sent to a work e-mail address or a shared e-mail address. Or they may simply wish to manage e-mail volume and content. Moreover, as the Board points out, concerns about fraud and identity theft facilitated through phishing argue against requiring e-mail statements or statement alerts and indeed illustrate the need for continued flexibility in order to respond to changing environments and challenges. Finally, as the Board notes, as electronic banking has evolved, creditors and their customers have responded and adapted in a manner that appears to work for both consumers and financial institutions.

Conclusion.

ABA appreciates the opportunity to submit our comments to the proposed revisions to Regulation B related to the electronic delivery of disclosures. We support the proposed withdrawal of the interim final rule and other proposed clarifications. To facilitate compliance, we recommend

that the Board clarify in the commentary that disclosures would be in compliance with the regulation if they would meet the requirements of the regulation when viewed on a home personal computer. Please feel free to contact us for additional information.

Sincerely,

Nessa Eileen Feddis