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29 June 2007

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

Truth in Lending
Regulation Z
Docket No. R-1284
72 Federal Register 21141, 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 Z, which implements the Truth in Lending Act ("TILA"). The Board is proposing to amend Regulation Z 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 Z to address the electronic delivery of communications and disclosures required under the TILA and Regulation Z.

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 with the Board that creditors should be permitted to provide application and advertising materials without regard to the consent provisions of 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 Z and proposals under Regulation B (Equal Credit Opportunity), E (Electronic Fund Transfers) M (Consumer Leasing), 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 Z 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.

Subpart B Open-end Credit.
Section 226.5 General disclosure requirements.

Proposed Section 226.5(a) clarifies that creditors may provide open-end credit disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. In addition, the proposal provides that the open-end credit disclosures required by Sections 226.5a (credit and charge card applications and solicitations), 226.5b (requirements for home equity plans), and 226.16 (advertising) may be provided to the consumer 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 advertisements and applications 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 also suggests that the Board include in the commentary to this section a statement that makes 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, such as account opening disclosures and periodic statement 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. The Supplementary Information alludes to this issue when it notes, for example, in discussing the requirements for credit and charge card solicitations and applications, "A consumer accesses an application or solicitation in electronic form when, for example, the consumer views the application or solicitation on his or her home computer." Similarly, the Supplementary Information discussing the requirements for home-equity plans, notes, "A consumer accesses a HELOC application in electronic form, when, for example, the consumer views the application on his or her home computer." However, that language is not contained in the proposed regulation or commentary. Moreover, the condition should apply to all disclosures, not just application and solicitation disclosures. Accordingly, we recommend that the commentary clarify, "Creditors meet the requirements of the regulation if the disclosures comply with the regulation when displayed on a home personal computer."

Subpart C – Closed-end Credit
Section 226.17 General disclosure requirement.

Under the proposal, the disclosures required under Sections 226.17(g) (mail or telephone orders – delay in disclosures), Section 226.19(b) (variable rate disclosures), and Section 226.24 (advertising) may be provided without regard to the consumer consent or other provisions of the E-Sign Act. For the reasons explained in our comments to Section 226.5, we agree with the Board that these disclosures should be accessible to consumers without regard to the consent and other provisions of the E-Sign Act.

In addition, we suggest that the Board clarify in the commentary to this section that creditors would be in compliance with requirements of the regulation if the disclosures would comply with the regulation when displayed on a home personal computer. This is important in order to address concerns about compliance when disclosures are viewed on the screen of a mobile phone or hand-held device. See comments to Section

226.5.

Subpart F Electronic Communications.

Under this subpart, the interim final rules established uniform requirements for the timing and delivery of electronic disclosures. Specifically, 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 others would also 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 to 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 identify 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 Z 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