

paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.

**§ 202.16 Requirements for electronic communication.**

(a) *Definition.* *Electronic communication* means a message transmitted electronically between a creditor and an applicant in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules set forth in this regulation, a creditor may provide by electronic communication any disclosure required by this regulation to be in writing. Disclosures provided by electronic communication must be provided in a clear and conspicuous manner and in a form the applicant may retain.

(c) *When consent is required.* For disclosures required by this regulation to be in writing, a creditor shall obtain an applicant's affirmative consent in accordance with the requirements of the E-Sign Act. Disclosures under §§ 202.9(a)(3)(i)(B), 202.13(a), and 202.14(a)(2)(i) are not subject to this requirement if provided on or with the application.

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

- (1) Send the disclosure to the applicant's electronic address; or
- (2) Make the disclosure available at another location such as an Internet Web site; and

(i) Alert the applicant of the disclosure's availability by sending a notice to the applicant's electronic address (or to a postal address, at the creditor's option). The notice shall identify the account involved and the address of the Internet Web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the applicant of the disclosure, whichever comes later.

(3) *Exceptions.* A creditor need not comply with paragraph (d)(2)(i) and (ii) of this section for the disclosure required by § 202.13(a).

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

(f) *Electronic signatures.* An electronic signature as defined under the E-Sign Act satisfies any requirement under this part for an applicant's signature or initials.

**§ 202.17 Enforcement, penalties and liabilities.**

(a) *Administrative enforcement*—(1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this regulation regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Surface Transportation Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, and Secretary of Transportation.

(2) Except to the extent that administrative enforcement is specifically assigned to other authorities, compliance with the requirements imposed under the Act and this regulation is enforced by the Federal Trade Commission.

(b) *Penalties and liabilities*—(1) Sections 702(g) and 706(a) and (b) of the Act provide that any creditor that fails to comply with a requirement imposed by the Act or this regulation is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 702(g) and 704(b), (c), and (d) of the Act, violations of the Act or this regulation also constitute violations of other federal laws. Liability for punitive damages can apply only to nongovernmental entities and is limited to \$10,000 in individual actions and the lesser of \$500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) As provided in section 706(f), a civil action under the Act or this regulation may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the Attorney General of the United States within two years after the alleged violation.

(3) If an agency responsible for administrative enforcement is unable to obtain compliance with the Act or this regulation, it may refer the matter to the Attorney General of the United States. If the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration has reason to believe that one or more creditors have engaged in a pattern or practice of discouraging or denying applications in violation of the Act or this regulation, the agency shall refer the matter to the Attorney General. If the agency has reason to believe that one or more creditors violated section 701(a) of the Act, the agency may refer a matter to the Attorney General.

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors have engaged in a pattern or practice in violation of the Act or this regulation, the Attorney General may bring a civil action for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(5) If the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration has reason to believe (as a result of a consumer complaint, a consumer compliance examination, or some other basis) that a violation of the Act or this regulation has occurred which is also a violation of the Fair Housing Act, and the matter is not referred to the Attorney General, the agency shall:

(i) Notify the Secretary of Housing and Urban Development; and

(ii) Inform the applicant that the Secretary of Housing and Urban Development has been notified and that remedies may be available under the Fair Housing Act.

(c) *Failure of compliance.* A creditor's failure to comply with §§ 202.6(b)(6), 202.9, 202.10, 202.12 or 202.13 is not a violation if it results from an inadvertent error. On discovering an error under §§ 202.9 and 202.10, the creditor shall correct it as soon as possible. If a creditor inadvertently obtains the monitoring information regarding the ethnicity, race, and sex of the applicant in a dwelling-related transaction not covered by § 202.13, the creditor may retain information and act on the application without violating the regulation.

**Appendix A to Part 202—Federal Enforcement Agencies**

The following list indicates the federal agencies that enforce Regulation B for