

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

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

3. *Timing and effective delivery.* i. *When an applicant applies for credit on-line.* When a creditor permits an applicant to apply for credit on-line, the applicant must be required to access the disclosures required at application before submitting the application. A link to the disclosures satisfies the timing rule if the applicant cannot bypass the disclosures before submitting the application. Or the disclosures must automatically appear on the screen, even if multiple screens are required to view all of the information. The creditor is not required to confirm that the applicant has read the disclosures.

ii. *Appraisals and adverse action.* Disclosures provided by e-mail are timely based on when the disclosures are sent. Disclosures posted at an Internet Web site, such as adverse action notices or copies of appraisals, are timely when the creditor has both made the disclosures available and sent a notice alerting the applicant that the disclosures have been posted. For example, under § 202.9, a creditor must provide a notice of action taken within 30 days of receiving a completed application. For an adverse action notice posted on the Internet, a creditor must post the notice and notify the applicant of its availability within 30 days of receiving the applicant's completed application.

4. *Retainability of disclosures.* Creditors satisfy the requirement that disclosures be in a form that the applicant may keep if electronic disclosures are delivered in a format that is capable of being retained (such as by printing or storing electronically). The format must also be consistent with the information required to be provided under section 101(c)(1)(C)(i) of the E-Sign Act (15 U.S.C. 7001(c)(1)(C)(i)) about the hardware and software requirements for accessing and retaining electronic disclosures.

5. *Disclosures provided on creditor's equipment.* A creditor that controls the equipment providing electronic disclosures to applicants (for example, a computer terminal in a creditor's lobby or an automated loan machine at a public kiosk) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and conspicuous format and in a form that the applicant may keep. For example, if disclosures are required at the time of an on-line application, the disclosures must be sent to the applicant's e-mail address or must be made available at another location such as the creditor's Internet Web site, unless the creditor provides a printer that automatically prints the disclosures.

#### 16(d) *Address or Location to Receive Electronic Communication.*

##### Paragraph 16(d)(1)

1. *Electronic address.* An applicant's electronic address is an e-mail address that is not limited to receiving communication transmitted solely by the creditor.

##### Paragraph 16(d)(2)

1. *Identifying account involved.* A creditor may identify a specific account in a variety of ways and is not required to identify an account by reference to the account number. For example, where the applicant has only one credit card account, and no confusion would result, the creditor may refer to "your credit card account." If the applicant has two credit card accounts, the creditor may, for example, differentiate accounts based on the card program or by using a truncated account number.

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

##### 16(e) *Redelivery.*

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

##### 16(f) *Electronic Signatures.*

1. *Relationship to the E-Sign Act.* The E-Sign Act provides that electronic signatures have the same validity as handwritten signatures. Section 106 of the E-Sign Act (15 U.S.C. 7006) defines an electronic signature. To comply with the E-Sign Act, an electronic signature must be executed or adopted by an applicant with the intent to sign the record. Accordingly, regardless of the technology used to meet this requirement, the process must evidence the applicant's identity.

#### Section 202.17—Enforcement, Penalties, and Liabilities

##### 17(c) *Failure of compliance.*

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under §§ 202.12 and 202.13, this section requires that they be corrected prospectively.

#### Appendix B—Model Application Forms

1. *Freddie Mac/Fannie Mae form—residential loan application.* The uniform

residential loan application form (Freddie Mac 65/Fannie Mae 1003), including supplemental form (Freddie Mac 65A/Fannie Mae 1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1992 may be used by creditors without violating this regulation. Creditors that are governed by the monitoring requirements of this regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 202.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) or by the Home Mortgage Disclosure Act (HMDA) may use the form as issued, in compliance with the substitute program or HMDA.

2. *FHLMC/FNMA form—home improvement loan application.* The home-improvement and energy loan application form (FHLMC 703/FNMA 1012), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of the regulation for some creditors but not others because of the form's section "Information for Government Monitoring Purposes." Creditors that are governed by § 202.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 202.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) may use the form as issued, in compliance with that substitute program.

#### Appendix C—Sample Notification Forms

1. *Form C-9.* Creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which an appraisal report should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or a copy of the report.

By order of the Board of Governors of the Federal Reserve System, March 5, 2003.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

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