

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