

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 79-6

January 10, 1979

REGULATION Z--TRUTH-IN-LENDING

Statement of Enforcement Policy

TO ALL STATE MEMBER BANKS  
AND OTHERS CONCERNED IN THE  
ELEVENTH FEDERAL RESERVE DISTRICT:

Uniform guidelines for enforcement of the Truth-in-Lending Act and Regulation Z have been adopted by the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration. These guidelines call for reimbursement to individuals for annual percentage rate and finance charge overcharges of \$1.00 or more, or for smaller overcharges which are part of a consistent pattern of violation or result from gross negligence or willful violation of the Act. The guidelines have been adopted after consideration of some 300 comments from the public since the proposed guidelines were issued in October of 1977.

It will continue to be the policy of the five agencies to require prospective correction of any violation of the Act which is detected. The new guidelines are viewed by the agencies as minimum standards for enforcement, which apply specifically to "closed end" credit. Open end credit violations which might occur in bank credit cards or overdraft protection plans would be subject to the same general treatment provided in the guidelines. The guidelines are not intended to substitute for any other administrative authority that any of the agencies has to enforce the Act, and they do not eliminate the customer's right to bring civil suit under the Act.

Under the guidelines, corrective action will be required for all violations on outstanding loans consummated since October 28, 1974. Corrective action also will be required for terminated loans consummated within two years of the examination date in which the violation was noted. In part, the guidelines call for corrective action where the violation involves the improper disclosure of the annual percentage rate or finance charge, improper disclosure of credit life, accident, health, or loss of income insurance, improper disclosure of a prepayment penalty or late payment charge, and an improper rebate made.

When a reimbursement is made to a customer, the creditor will be required to inform the customer that the reimbursement being made is a result of the creditor's

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Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-492-4403 (intrastate) and 1-800-527-4970 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

failure to disclose as required by the Truth-in-Lending Act. The creditor may, at its option, use either a lump sum method or a lump sum/payment reduction method to reimburse overcharges.

Creditors are encouraged to make voluntary reimbursement and are reminded that the Act absolves them of civil liability for unintentional violations corrected within 15 days of discovery of an error.

A copy of the Board of Governors' press release and a copy of the Joint Notice of Statement of Enforcement Policy is attached. Any questions regarding the new guidelines should be directed to this Bank's Consumer Affairs Section, Ext. 6171.

Sincerely yours,

Robert H. Boykin

First Vice President

Attachments



# FEDERAL RESERVE

press release

This statement is being released on behalf of the following  
Federal regulators of financial institutions:

The Comptroller of the Currency (supervisor of national banks);  
The Federal Deposit Insurance Corporation (supervisor of Federally insured  
State chartered nonmember banks and mutual savings banks);  
The Federal Reserve Board (supervisor of Federally insured State chartered  
member banks);  
The Federal Home Loan Bank Board (supervisor of Federally insured savings  
and loan associations), and  
The National Credit Union Administration (supervisor of Federally insured  
credit unions).

For immediate release

December 28, 1978

Uniform guidelines for the enforcement of the Truth in Lending law  
and its implementing regulations have been adopted by the five Federal  
agencies that regulate Federally insured commercial banks, mutual savings  
banks, savings and loan associations and credit unions.

The agencies adopted the enforcement guidelines after consideration  
of some 300 comments received following publication of proposed guidelines  
last year. The guidelines call for reimbursement to individuals for over-  
charges of \$1 or more, or for smaller overcharges that are part of a  
consistent pattern of violation or result from gross negligence or willful  
violations of the Act.

In adopting the guidelines for the enforcement of the requirements  
of the Truth in Lending Act for disclosure of the true costs of using  
credit, the five agencies (named above) said:

"Coordination among the agencies is desirable in order to  
bring about uniformity in the administrative actions that  
will be taken when violations of the Act are detected.  
To that end, the agencies have developed a set of policy  
guidelines for measuring and correcting the conditions  
resulting from certain violations of the Truth in Lending  
Act.

"The guidelines ... are intended to address those violations which result in overcharges to customers.

"It should be emphasized that it will continue to be the policy of the enforcing agencies that, whenever any violation of the Act is detected prospective correction of the violation will be required -- that is, creditors will be required to take whatever action is necessary to ensure that violations do not recur ....

"These guidelines are not intended to substitute for any other administrative authority that any of the agencies has to enforce the Act, nor do they foreclose the customer's right to bring a civil action where authorized by the Act. Further, where apparently willful and knowing violations are found, the agencies will notify the Department of Justice.

"As new examination data concerning the extent and type of violations are received, the guidelines will be reviewed and revised as appropriate. They may be modified at the discretion of the agencies so as to be more responsive to specific or unique circumstances that may exist."

The Truth in Lending Act was written in 1968. At the direction of Congress the Federal Reserve Board wrote implementing rules -- Regulation Z -- for the use of creditors, consumers and Federal regulators of creditors.

The rules of application for the guidelines state:

The guidelines, viewed by the agencies as minimum standards for enforcement, apply specifically to violations in other than open-end transactions. Violations of disclosure requirements in open-end transactions (such as use of a credit card) will be treated on a case by case basis, but subject to the same general treatment as provided by the guidelines. Where violations are discovered in loans purchased by one institution from another, the enforcing agency for the holder of the loan must notify the supervisor of the institution that originated the credit.

Each enforcing agency retains authority to take appropriate alternative action consistent with the guidelines. The five-agency statement of policy does not preclude enforcement of provisions of the Act not covered by the guidelines.

In addition to the above rules of application, the guidelines, effective immediately, are as follows:

-- DE MINIMIS RULE

(a) Violations discovered which result in overcharges shall require corrective action in the form of reimbursement to individual accounts for each overcharge of one dollar or more.

(b) The agencies reserve the right to require reimbursement or other corrective action for violations that result in amounts below the de minimis amount when they are part of a consistent pattern or are due to gross negligence or a willful violation of the Act.

-- PERIOD FOR WHICH CORRECTIVE ACTION IS REQUIRED

(a) Corrective action shall be required for all violations within the scope of these guidelines on outstanding loans consummated since October 28, 1974.

(b) Corrective action shall be required for all violations within the scope of these guidelines on terminated loans consummated within two years of the examination in which the violation was noted.

-- VIOLATIONS INVOLVING THE IMPROPER DISCLOSURE OF ANNUAL PERCENTAGE RATE (APR) OR FINANCE CHARGE

(a) Where there is an understated APR and the finance charge is either correct or not disclosed, the creditor shall take corrective

action to ensure that the customer's true cost of credit does not exceed the disclosed APR. Where there is an understated finance charge and the APR is correct, the creditor shall reimburse the overcharge (the difference between the actual and the understated finance charge). If the disclosed APR and finance charge are both understated, the creditor shall take appropriate action to correct the larger overcharge.

(b) In cases where an APR was required to be disclosed but was omitted, the disclosed APR shall be considered to be:

(1) the contract rate, if such a rate was disclosed on the note or Truth in Lending disclosure statement, or

(2) if such contract rate was not disclosed, the actual APR, reduced by 1/4 of 1 percentage point in the case of first lien mortgage transactions, and by 1 percentage point in all other transactions.

The creditor shall take corrective action to ensure that the customer's true cost of credit does not exceed the disclosed APR as defined in this paragraph.

-- METHODS OF ADJUSTMENT

In the event a customer has been overcharged, the customer will be reimbursed using either the lump sum method or the lump sum/payment reduction method, at the discretion of the creditor.

-- VIOLATIONS INVOLVING THE IMPROPER DISCLOSURE OF CREDIT LIFE, ACCIDENT, HEALTH OR LOSS OF INCOME INSURANCE

(a) If the creditor has not disclosed to the customer in writing that credit life, accident, health or loss of income insurance is optional, the insurance shall be treated as having been required by

the creditor and improperly excluded from the finance charge. The creditor shall take appropriate corrective action for the overcharge resulting from the understated finance charge or APR. The insurance will remain in effect.

(b) If the creditor has disclosed to the customer in writing that credit life, accident, health or loss of income insurance is optional but there is either no signed insurance option or no disclosure of the cost of the insurance, the creditor shall, unless a claim was made on the insurance policy and paid, be required to send a written notice to the affected customer disclosing the cost of the insurance and notifying the customer that the insurance is optional and that it may be cancelled within 45 days to obtain a full refund of all premiums charged. If the creditor receives no response within 45 days, the insurance will remain in effect and no further corrective action will be required.

(c) Omission of the date on the insurance option shall not be considered to result in an overcharge.

-- SPECIAL DISCLOSURE VIOLATIONS

(a) If a creditor has not included the premium for required property insurance as part of the finance charge, and has failed to make required disclosure under 12 C.F.R. Section 226.4(a)(6), it shall not constitute an overcharge.

(b) If a creditor has not itemized and disclosed the charges found in 12 C.F.R. Section 226.4(b) and has not included them in the finance charge as required by that Section, the resulting disclosure violation shall not constitute an overcharge.

-- NON-FINANCE CHARGE VIOLATIONS

(a) If a prepayment penalty or late payment charge in excess of that disclosed has been collected, the excess shall be reimbursed.

(b)(1) A creditor which gives a less favorable rebate of unearned finance charges than was disclosed must reimburse the difference between the disclosed and actual rebate amounts.

(2) Failure to rebate unearned finance charges results in an overcharge if the creditor has not disclosed that unearned finance charges will not be rebated. In such event, the creditor will be required to rebate unearned finance charges according to the method disclosed or, if none was disclosed, according to the method specified under State law. If no method was disclosed and State law is silent, the creditor shall rebate unearned finance charges pursuant to the actuarial method based on scheduled payments.

-- DISCLOSURE OF REASON FOR CORRECTIVE ACTION

Whenever corrective action in the form of reimbursement is made to a customer, the creditor must inform the customer that the reimbursement is being made as a result of the creditor's failure to make disclosures required by the Truth in Lending Act.

-- REIMBURSEMENT PROCEDURES

Creditors are encouraged to make reimbursement voluntarily and are reminded that the Act absolves them of civil liability for unintentional violations corrected within 15 days of discovery of an error.



In the event a creditor refuses to make reimbursement as requested, the agency may issue a cease-and-desist order to require corrective action in accordance with procedures prescribed in its general enforcement authority.

The full texts of the agencies' Joint Notice of Statement of Enforcement Policy for Regulation Z may be obtained upon request. The explanatory preamble to the Statement is attached.

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BOARD OF GOVERNORS  
FEDERAL RESERVE SYSTEM

Regulation Z

JOINT NOTICE OF STATEMENT OF ENFORCEMENT POLICY

AGENCIES: The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration.

ACTION: Statement of interagency enforcement policy - Regulation Z.

SUMMARY: This statement of enforcement policy sets forth uniform guidelines which the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration will use to enforce the Truth in Lending Act and Regulation Z. Specific, standardized guidelines will promote improved enforcement of the Truth in Lending Act through uniform corrective action, including reimbursement for borrowers who have been overcharged as a result of violations of the Act.

EFFECTIVE DATE: This statement shall become effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Alan Dombrow, Office of the Comptroller of the Currency, 202-447-1600; Peter M. Kravitz, Federal Deposit Insurance

Corporation, 202-389-4427; Harry W. Quillian, Federal Home Loan Bank Board, 202-377-6440; Margaret Stewart, Federal Reserve Board, 202-452-2412; Linda Cohen, National Credit Union Administration, 202-254-8760.

SUPPLEMENTARY INFORMATION: This document sets forth the principles that the federal regulatory agencies involved will use in enforcing the Truth in Lending Act and Regulation Z. Coordination among the agencies is desirable in order to bring about uniformity in the administrative actions that will be taken when violations of the Act are detected. To that end, the agencies have developed a set of policy guidelines for measuring and correcting the conditions resulting from certain violations of the Truth in Lending Act.

The guidelines which follow are intended to address those violations which result in overcharges to customers. It should be emphasized that it will continue to be the policy of the enforcing agencies that, whenever any violation of the Act is detected, prospective correction of the violation will be required—that is, creditors will be required to take whatever action is necessary to ensure that the violation does not recur. For example, a creditor using forms that do not comply with the type size requirements will be required to obtain new forms which do comply.

These guidelines are not intended to substitute for any other administrative authority that any of the agencies has to enforce the Act, nor do they foreclose the customer's right to bring a civil action where authorized by the Act. Further, where

apparently willful and knowing violations are found, the agencies will notify the Department of Justice.

As new examination data concerning the extent and type of violations are received, the guidelines will be reviewed and revised as appropriate. They may be modified at the discretion of the agencies so as to be more responsive to specific or unique circumstances which may exist. The guidelines are also subject to revision where necessary to reflect changes in the Truth in Lending Act or Regulation Z.

The five participating agencies published a proposed statement of enforcement policy in October 1977. More than 300 comments, raising at least twenty different substantive and technical issues, were received. In the months following the close of the comment period in December 1977, the staffs of the participating agencies analyzed the comments and drafted several revised proposals in an effort to accommodate, to the extent possible, the concerns expressed in those comments, as well as the views of all the agencies. In September 1978, the Interagency Coordinating Committee, which is composed of senior representatives of the five agencies, agreed on a final draft and recommended its adoption. That action has now been taken by all the agencies involved.

Among the more significant aspects of the revised guidelines are the following:

1. The guidelines set forth a minimum standard for enforcement of the Truth in Lending Act. Each enforcing agency retains the option of taking alternative action where warranted and is in no way

precluded from taking enforcement action for violations not covered by the guidelines.

2. The agencies will require reimbursement for violations discovered on outstanding loans consummated after October 28, 1974, and on terminated loans originated no more than two years prior to the date of examination in which the violation is discovered.

3. A creditor which understates the annual percentage rate will be required to adjust the cost of credit to assure that the customer pays no more than the disclosed annual percentage rate. A creditor understating the finance charge must reimburse customers for the difference between the actual and the disclosed finance charge. Where the creditor failed to disclose an annual percentage rate as required, the customer's cost of credit must be adjusted to the amount of the rate shown on the note or contract. Where the annual percentage rate is undisclosed and no rate is shown on the note or contract, the creditor will be required to reduce the actual annual percentage rate by one quarter of one percentage point in first lien mortgage transactions and by one percentage point in other transactions.

4. The guidelines provide a tolerance of one-eighth of one percentage point in disclosure of an annual percentage rate, meaning that an annual percentage rate which understates the true cost of credit will be subject to corrective action only if the understatement is greater than one-eighth of one percentage point. The guidelines also provide a tolerance for finance charge disclosures. If the dis-

closed finance charge understates the true finance charge by no more than \$100 or 1% of the correct finance charge, whichever is lower, the understatement will not be subject to corrective action.

5. The agencies will require reimbursement for a violation resulting in an overcharge of \$1.00 or more for an individual account. They may also require some form of corrective action for amounts under this level where the violations are part of a consistent pattern or are due to gross negligence or a willful violation of the Act.

6. Once the amount of the overcharge is determined to be above the tolerance levels for annual percentage rate and finance charge disclosures, and thus subject to reimbursement, the creditor will also be required to reimburse that portion of the overcharge representing the tolerance amount. The same principle will apply to the \$1.00 minimum amount necessary to trigger reimbursement. Thus, these amounts will be included in computing the total required to be returned to the customer.

7. The creditor may, at its option, use either the lump sum method or the lump sum/payment reduction method as a method of reimbursement where overcharges are discovered. These methods are defined in the guidelines.

8. The agencies will not require reimbursement for violations involving disclosures of property insurance charges under § 226.4(a)(6) and the charges listed in § 226.4(b).

9. The agencies will require reimbursement for certain violations not involving disclosure of the finance charge and the

annual percentage rate. These violations are related to disclosure of late payment charges, prepayment penalties and the method of rebating unearned finance charges.

10. A customer whose transaction is subject to reimbursement must be told that the reimbursement is the result of the creditor's failure to properly disclose information required by the Truth in Lending Act.

11. Special rules apply when credit life insurance is excluded from the finance charge, but disclosure of the voluntary nature of the insurance was not made in accordance with the Act and regulation.

12. While the guidelines do not apply specifically to open end credit violations, it is understood by the agencies that such violations will be subject to the general policies set forth in these guidelines and that reimbursement will be required in appropriate cases.

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