

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 79-181
November 7, 1979

AMENDMENT TO AND INTERPRETATION OF REGULATION Z

Notice of Right of Rescission In Open End Credit Plans

TO ALL BANKS, OTHER CREDITORS,
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

The Board of Governors of the Federal Reserve System has announced that it will revoke an amendment to its Regulation Z, Truth in Lending, which provides for an exemption from the rescission notice requirement for certain advances under open end credit arrangements. Under the amendment, the right of rescission notice is required only when the credit plan is first opened, when the credit limit is increased or the terms of the account changed, when a new security interest in a home is added to an existing open end credit plan, and once annually. After careful consideration, the Board has decided to rescind the amendment and the related Board and staff interpretations effective March 31, 1980. Leeway has been provided for the orderly modification or termination of the few open end credit plans now making use of the amendment.

Printed on the following pages is the text of the Board's order as submitted for publication in the Federal Register, together with a copy of Regulation Z Public Information Letter FC-0159 which is effective immediately but which will cease to be effective March 31, 1980.

Any questions concerning Regulation Z should be directed to the Consumer Affairs Section of our Bank Supervision and Regulations Department, Ext. 6171.

Sincerely yours,

Robert H. Boykin

First Vice President

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

Final Rulemaking
Title 12 - Banks and Banking
CHAPTER II - FEDERAL RESERVE SYSTEM
SUBCHAPTER A - BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
[Reg. Z; Docket No. R-0202]
Part 226 - TRUTH IN LENDING

Right of Rescission

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule.

SUMMARY: Effective in August 1978, the Board amended Regulation Z by creating an alternative in certain circumstances to the three-day cancellation right otherwise applicable to each individual advance under open-end credit accounts secured by consumers' residences. This action rescinds that amendment. It also rescinds a Board interpretation that provided sample disclosures that creditors could use to meet certain of the amendment's requirements and rescinds an official staff interpretation of the applicability of the amendment to nonsale credit advances.

EFFECTIVE DATE: March 31, 1980.

FOR FURTHER INFORMATION CONTACT: Robert C. Plows, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3667).

SUPPLEMENTARY INFORMATION: On December 9, 1977 (42 FR 62146), the Board proposed an amendment to § 226.9(g) of Regulation Z (12 CFR Part 226) to provide an exception to the requirement that a customer have a three-day "cooling off" period in which to cancel each separate advance under an open-end credit plan (such as a credit card or cash advance checking account) where credit extended under the plan is secured by the customer's principal residence. The proposal was substantially modified based upon the comments that were received and was adopted effective August 3, 1978 (43 FR 34111). It permits a creditor that is not the seller of the goods or services being purchased on credit to extend open-end credit without each separate advance being subject to the right of rescission.

The amendment, incorporated in § 226.9(g)(6), was accompanied by Board Interpretation § 226.904, which sets forth model disclosures that creditors may use to comply with certain notice requirements of the amendment. A technical change, revising the language, but not the substance, of the model disclosures was adopted effective October 31, 1978 (43 FR 50672).

In addition, the staff issued Official Staff Interpretation FC-0159 (43 FR 56877), which states that the exception to the right of rescission in § 226.9(g)(6) is available to a creditor that extends essentially nonsale credit, for example, a cash advance loan in the form of traveler's checks. The staff interpretation has been suspended pending the Board's decision on the question of whether to retain the exemption in § 226.9(g)(6).

After the exemption was adopted, the Board was urged to reconsider the matter because interested parties may not have been aware of the proposal when it was initially published and may not, therefore, have submitted comments on the possible risks and benefits to customers that might result from the amendment. Accordingly, on February 15, 1979 (44 FR 9761), the Board asked for comment on whether it should suspend or repeal the amendment and Board interpretation, whether the amendment should be modified to provide additional protections to customers, and whether creditors that intend to offer open-end credit plans under the amendment should be required to notify the Board of that intention and provide the Board with a copy of the initial Truth in Lending disclosures to be made in connection with the plans. The Board also requested information about plans currently being offered pursuant to the amendment.

Some 160 comments were received from the credit industry, consumer representatives, government agencies, members of the Congress and the Board's Consumer Advisory Council, and others. After carefully considering all of the comments, the Board has decided to rescind the amendment and the related Board and staff interpretations. In reaching that decision, the Board took into consideration the concern expressed by some members of the Congress and the Board's Consumer Advisory Council, consumer representatives, and federal, state, and local government agencies that consumers might be led unawares into more debt than they could afford and might as a result lose their homes -- a consequence that the right of rescission is intended to help prevent.

The Board also considered three other factors: the potentially unfair competitive advantage that the amendment gives to nonseller creditors; the fact that few creditors are offering plans pursuant to the amendment; and the fact that creditors can feasibly offer lines of credit secured by a customer's residence even if each use of the line is subject to the right of rescission.

Regarding that final point, while credit extended through conventional credit cards cannot practically be secured by the customer's residence given the three-day cancellation right for each advance, the convenience of flexible repayment under an open-end credit arrangement, as well as more favorable terms reflecting the existence of a security interest in a residence, can be made available in compliance with § 226.9 for customers who have specific, foreseeable credit needs. For example, a creditor could offer an open-end credit plan pursuant to which cash advances would be made to the customer after the notice of the right of rescission had been given and the three-day "cooling off" period had expired.

The Board's action revoking the amendment and interpretations will become effective on March 31, 1980, in order to provide ample time for the orderly modification or termination of the limited number of open-end credit plans now in existence that are secured by the customer's principal residence. In order to provide guidance to nonseller creditors during the transition, the Board is republishing Official Staff Interpretation FC-0159. FC-0159 will take effect immediately and will remain in effect until March 31, 1980. The result of revoking the amendment and related interpretations will be to require that a notice of the right of rescission be given in connection with each credit advance occurring after March 30, 1980, pursuant to any open-end credit plan secured by a customer's principal residence.

Therefore, pursuant to the authority granted in § 105 of the Truth in Lending Act (15 U.S.C. 1604 (1970)), the Board amends § 226.9(g) of Regulation Z (12 CFR Part 226) by deleting § 226.9(g)(6). It also revokes Board Interpretation § 226.904 and Official Staff Interpretation FC-0159. This action shall take effect on March 31, 1980.

By order of the Board of Governors, September 19, 1979.

(signed) Griffith L. Garwood

Griffith L. Garwood
Deputy Secretary of the Board

[SEAL]

TITLE 12 -- BANKS AND BANKING
CHAPTER II -- FEDERAL RESERVE SYSTEM
SUBCHAPTER A -- BOARD OF GOVERNORS OF
THE FEDERAL RESERVE SYSTEM
[Reg. Z; FC-0159]
PART 226 -- TRUTH IN LENDING

Final Official Staff Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Official Staff Interpretation.

SUMMARY: The Board is publishing in final form official staff interpretation FC-0159 of Regulation Z, Truth in Lending, regarding the availability of the § 226.9(g)(6) exception to the right of rescission for a creditor that extends essentially nonsale credit. The agency is taking this action pursuant to its final rule concerning § 226.9(g)(6) of Regulation Z, which is published in this issue of the Federal Register.

DATE: FC-0159 is effective immediately, but it shall cease to be effective March 31, 1980.

FOR FURTHER INFORMATION CONTACT: Robert C. Plows, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3667.

SUPPLEMENTARY INFORMATION: (1) For further information concerning this action, refer to the Board's final rule on the right of rescission, Docket No. R-0202, which is published in today's issue of the Federal Register.

(2) Official Staff Interpretation FC-0159, which follows, is effective immediately, but it shall cease to be effective March 31, 1980.

(3) Authority: 15 U.S.C. 1640(f)

§ 226.9(g)

Creditor that extends nonsale credit directly to customer under open end credit plan may qualify for § 226.9(g)(6) exception to general rescission requirements.

September 19, 1979

This is in response to your letter of . . . , in which you request an official staff interpretation of the Board's recent amendment to the rescission provisions of Regulation Z. That amendment, § 226.9(g)(6) of the regulation, provides an exception to the regulation's general requirements regarding the right of rescission for individual transactions under an open end credit account, provided the specific requirements of the amendment are satisfied.

Specifically, you ask for clarification of § 226.9(g)(6)(i). Under that provision, the exception from the right of rescission for individual transactions under an open end credit account applies (assuming the amendment's other requirements are met) provided "[t]hat the creditor and the seller are not the same or related persons." You are concerned that this provision may be interpreted to mean that, for the exception to apply, an open end credit transaction must involve a seller that is not the same person as the creditor or related to the creditor. Under such an interpretation, the exception could not apply to a nonsale open end credit transaction (e.g., a cash advance loan made pursuant to an open end line of credit).

The staff is of the opinion that, in adopting this amendment to Regulation Z, the Board intended to allow creditors to qualify for an exception to the regulation's general rescission requirements for any open end credit transaction, whether involving sale or nonsale credit, except for the limited class of transactions in which the creditor of an open plan is the same person as or is related to the seller of property or services purchased by means of the plan. Thus, for example, a creditor of an open end plan could extend nonsale credit under the plan directly to a customer (in which case the creditor and the lender would be the same person and there would be no seller involved in the transaction at all) and could still qualify for the amendment's exception.

This is an official staff interpretation of Regulation Z, issued pursuant to the Board's final rule concerning § 226.9(g)(6) of Regulation Z. It is effective immediately, but shall cease to be effective March 31, 1980.

Nathaniel E. Butler
Associate Director

By order of the Board of Governors, September 19, 1979.

(signed) Griffith L. Garwood

Griffith L. Garwood
Deputy Secretary of the Board

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