FEDERAL RESERVE BANK
OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

DALLAS, TEXAS
75265-5906

August 30, 1996

Notice 96-82

TO: The Chief Executive Officer of each financial institution in the Eleventh Federal Reserve District

SUBJECT

Slip-sheet Amendments to Regulations H, K, Z, BB, EE, and to the Official Staff Commentary on Regulation B

DETAILS

The Board of Governors of the Federal Reserve System has published slip-sheet amendments to Regulation H, effective April 1, 1996; Regulation K, with various effective dates; Regulation Z, effective September 25 and September 30, 1995; Regulation BB, effective January 1, 1996; Regulation EE, effective February 20, 1996; and the Official Staff Commentary on Regulation B, effective June 5, 1995.

ENCLOSURES

The amendment slip sheets and an updated index to regulations are enclosed. Please insert them in your Regulations binders.

For additional copies, bankers and others are encouraged to use one of the following toll-free numbers in contacting the Federal Reserve Bank of Dallas: Dallas Office (800) 333-4460; El Paso Branch *Intrastate* (800) 592-1631, *Interstate* (800) 351-1012; Houston Branch *Intrastate* (800) 392-4162, *Interstate* (800) 221-0363; San Antonio Branch *Intrastate* (800) 292-5810.

This publication was digitized and made available by the Federal Reserve Bank of Dallas' Historical Library (FedHistory@dal.frb.org)

MORE INFORMATION

For more information regarding Regulation H, please contact Lynn Black at (214) 922-6069. For more information regarding Regulation K, please contact Richard Burda at (713) 652-1503. For more information regarding Regulation Z or the Official Staff Commentary on Regulation B, please contact Eugene Coy at (214) 922-6201.

For more information regarding Regulation BB, please contact Gloria Vasquez Brown at (214) 922-5266. For more information regarding Regulation EE, please contact Jane Schmoker at (214) 922-5101.

For additional copies of this Bank's notice, the slip sheets, or the index to regulations, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

Amendments to Regulation H Membership of State Banking Institutions in the Federal Reserve System March 1996*

1. *Effective April 1, 1996, section 208.20 is amended to read as follows:*

SECTION 208.20—Suspicious-Activity Reports

(a) *Purpose.* This section ensures that a state member bank files a suspicious-activity report when it detects a known or suspected violation of federal law, or a suspicious transaction related to a money-laundering activity or a violation of the Bank Secrecy Act. This section applies to all state member banks.

(b) *Definitions.* For the purposes of this section:

(1) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(2) *Institution-affiliated party* means any institution-affiliated party as that term is defined in 12 USC 1786(r), or 1813(u) and 1818(b)(3), (4) or (5).

(3) *SAR* means a suspicious-activity report on the form prescribed by the Board

(c) *SARs required.* A state member bank shall file a SAR with the appropriate federal law enforcement agencies and the Department of the Treasury in accordance with the form's instructions by sending a completed SAR to FinCEN in the following circumstances:

(1) *Insider abuse involving any amount.* Whenever the state member bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying one of its directors, officers, employees, agents, or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.

(2) *Violations aggregating $5,000 or more where a suspect can be identified.* Whenever the state member bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating $5,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an "alias," then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as driver's license or Social Security numbers, addresses and telephone numbers, must be reported.

(3) *Violations aggregating $25,000 or more regardless of a potential suspect.* Whenever the state member bank detects any known or suspected federal

* A complete Regulation H, as amended effective April 1, 1996, consists of—
- the regulation pamphlet dated October 1995 (see inside cover) and
- this slip sheet.

criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating $25,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(4) *Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.* Any transaction (which for purposes of this paragraph (c)(4) means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the state member bank and involving or aggregating $5,000 or more in funds or other assets, if the bank knows, suspects, or has reason to suspect that—

(i) the transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction-reporting requirement under federal law;

(ii) the transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(iii) the transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(d) *Time for reporting.* A state member bank is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a state member bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and the Board in addition to filing a timely SAR.

(e) *Reports to state and local authorities.* State member banks are encouraged to file a copy of the SAR with state and local law enforcement agencies where appropriate.

(f) *Exceptions.*

(1) A state member bank need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(2) A state member bank need not file a SAR for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(g) *Retention of records.* A state member bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of the filing of the SAR. Supporting documentation shall be identified and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A state member bank must make all

supporting documentation available to appropriate law enforcement agencies upon request.

(h) *Notification to board of directors.* The management of a state member bank shall promptly notify its board of directors, or a committee thereof, of any report filed pursuant to this section.

(i) *Compliance.* Failure to file a SAR in accordance with this section and the instructions may subject the state member bank, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

(j) *Confidentiality of SARs.* SARs are confidential. Any state member bank subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed citing this section, applicable law (e.g., 31 USC 5318(g)), or both, and notify the Board.

(k) *Safe harbor.* The safe-harbor provisions of 31 USC 5318(g), which exempts any state member bank that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, covers all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this section or are filed on a voluntary basis.

Board of Governors of the Federal Reserve System

Amendments to Regulation K International Banking Operations July 1996*

1. *Effective December 21, 1995, section 211.2 is amended by redesignating paragraphs (u) and (v) as paragraphs (v) and (w), respectively, and by adding new paragraphs (u) and (x) to read as follows:*

(u) *Strongly capitalized* means—

(1) in relation to a parent member bank, that the standards set out in 12 CFR 208.33(b)(1) are satisfied; and

(2) in relation to an Edge or agreement corporation or a bank holding company, that it has a total risk-based capital ratio of 10.0 percent or greater.

* * * * *

(x) *Well managed* means that the Edge or agreement corporation, its parent member bank, if any, and the bank holding company have each received a composite rating of 1 or 2 at its most recent examination or review and are not subject to any supervisory enforcement action.

2. *Effective December 21, 1995, section 211.5 is amended by redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(3) and (c)(4), respectively. In the third sentence of newly designated paragraph (c)(3), the word "accepted" is replaced with the word "received." A new paragraph (c)(2) is added to read as follows:*

(2) (i) *Expanded general consent for de novo investments.* Notwithstanding the amount limitations of paragraph (c)(1) of this section, but subject to the other limitations of this section, the Board grants expanded general consent authority for investments in an organization by an investor that is strongly capitalized and well managed if—

(A) the activities of the organization are limited to activities in which a national bank may engage directly or in which a subsidiary may engage under section 211.5(d);

(B) in the case of an investor that is an Edge corporation that is not engaged in banking or an agreement corporation, the total amount invested in such organization (in one transaction or a series of transactions) does not exceed the lesser of 20 percent of the investor's tier 1 capital or 2 percent of the tier 1 capital of the parent member bank;

(C) in the case of a bank holding company or member bank investor, the total amount invested in such organization (in one transaction or a series of transactions) directly or indirectly does not exceed 2 percent of the investor's tier 1 capital;

(D) all investments made, directly or indirectly, by an Edge corporation not engaged in banking or an agreement corporation during the previous 12-month period under paragraph (c)(2) of this section, when aggregated with the proposed investment, would not exceed the lesser of 50 percent of the total capital of the Edge or agreement corporation, or 5 percent of the total capital of the parent member bank;

(E) all investments made, directly or indirectly, by a member bank or a bank holding company during the previous 12-month period under paragraph (c)(2) of this section, when

* A complete Regulation K, as amended effective May 9, 1996, consists of—

- the regulation pamphlet dated January 1994 (see inside cover) and
- this slip sheet.

Items 1, 2, 3, 5, 6, 7, 8, and 10 are new. Items 4 and 9 were included in the January 1995 slip sheet.

aggregated with the proposed investment, would not exceed 5 percent of its total capital; and

(F) both before and immediately after the proposed investment the investor, its parent member bank, if any, and any parent bank holding company are strongly capitalized and well managed.

(ii) *Determining aggregate investment limits.* For purposes of determining compliance with the aggregate investment limits set out in paragraphs (c)(2)(i)(D) and (E) of this section, an investment by an investor in a subsidiary shall be counted only once notwithstanding that such subsidiary may, within 12 months of the date of making the investment, downstream all or any part of such investment to another subsidiary.

(iii) *Additional investments.* An investor that makes investments under paragraph (c)(2)(i) of this section may also make additional investments in an organization under the standards set forth in paragraphs (c)(1)(ii), (c)(1)(iii) and (c)(1)(iv) of this section.

(iv) *Ineligible investments.* The following investments are not eligible for the general consent under paragraph (c)(2)(i) of this section:

(A) an investment in a foreign country where the investor does not have an affiliate or a branch;

(B) the establishment or acquisition of an initial subsidiary bank in a foreign country;

(C) investments in general partnerships or unlimited liability companies; and

(D) an acquisition of shares or assets of an organization that is not an affiliate or joint venture of the investor.

(v) *Post-investment notice.* By the end of the month following the month in which the investment is made, the investor shall provide the Board with the following information relating to the investment:

(A) if the investment is in a joint venture, the respective responsibilities of the parties to the joint venture;

(B) projections for the organization in which the investment is made for the first year following the investment; and

(C) where the investment is made in an organization that incurred a loss in the last year, a description of the reasons for the loss and the steps taken to address the problem.

3. *Effective April 1, 1996, section 211.8 is amended by replacing the words "criminal referral form" with the words "suspicious-activity report."*

4. *Effective January 1, 1995, section 211.21(e) is amended to read as follows:*

(e) *Change the status* of an office means convert a representative office into a branch or agency, or an agency into a branch, but does not include renewal of the license of an existing office.

5. *Effective May 9, 1996, section 211.22(a) is amended to read as follows. Section 211.22(c) is deleted, and section 211.22(d) is redesignated as 211.22(c).*

(a) *Determination of home state.*

(1) A foreign bank (except a foreign bank to which paragraph (a)(2) of this section applies) that has any combination of domestic agencies or subsidiary commercial lending companies that were established before September 29, 1994, in more than one state and have been continuously operated shall select its home state from those states in which such offices or subsidiaries are located. A foreign bank shall do so by filing with the Board a declaration of home state by June 30, 1996. In the absence of such selection, the Board shall designate the home state for such foreign banks.

(2) A foreign bank that, as of September 29, 1994, had declared a home state or had a home state determined pursuant to the law and regulations in effect prior to that date shall have that state as its home state.

(3) A foreign bank that has any branches, agencies, subsidiary commercial lending companies, or subsidiary banks in one state, and has no such offices or subsidiaries in any other states, shall have as its home state the state in which such offices or subsidiaries are located.

6. *Effective January 24, 1996, section 211.24 is amended by revising paragraphs (a)(2)(i) and (ii) to read as follows:*

(i) *Prior notice for certain representative offices.* After providing 45 days' prior written notice to the Board, a foreign bank that is subject to the BHC Act, either directly or through section 8(a) of the IBA (12 USC 3106(a)), may establish—

(A) a regional administrative office; or

(B) a representative office, but only if the Board has previously determined that the foreign bank proposing to establish a representative office is subject to comprehensive supervision or regulation on a consolidated basis by its home-country supervisor, or previously has been approved for a representative office by Board order. The Board may waive the 45-day period if it finds that immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is received by the appropriate Reserve Bank. The Board may suspend the period or require Board approval prior to the establishment of such an office if the notification raises significant policy, prudential, or supervisory concerns.

(ii) *General consent for representative offices.* The Board grants its general consent for a foreign bank that is subject to section 8(a) of the IBA (12 USC 3106(a)) to establish a representative office that solely engages in limited administrative functions (such as separately maintaining back-office support systems) that are clearly defined, are performed in connection with the United States banking activities of the foreign bank, and do not involve contact or liaison with customers or potential customers beyond incidental contact with existing customers relating to administrative matters (such as verification or correction of account information), provided that the foreign bank notifies the Board in writing within 30 days of the establishment of the representative office.

7. *Effective January 24, 1996, section 211.24 is amended by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to read as follows:*

(3) *Special-purpose foreign-government banks.* A foreign government–owned organization engaged in banking activities in its home country that are not commercial in nature may apply to the Board for determination that the organization is not a *foreign bank* for purposes of this section. A written request setting forth the basis for such a determination may be submitted to the Reserve Bank of the District in which the foreign organization's representative office is located in the United States or to the Board in the case of a proposed establishment of a representative office. The Board will review and act upon each such request on a case-by-case basis.

8. *Effective April 1, 1996, section 211.24(f) is amended by replacing the words "criminal referral form" with the words "suspicious-activity report."*

9. *Effective January 1, 1995, section 211.29 is added to read as follows:*

SECTION 211.29—Applications by State-Licensed Branches and Agencies to Conduct Activities Not Permissible for Federal Branches

(a) *Scope.* A state-licensed branch or agency shall file with the Board a prior written application for permission to engage in or continue to engage in any type of activity that—

(1) is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Office of the Comptroller of the Currency; or

(2) is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction.

(b) *Exceptions.* No application shall be required by a state-licensed branch or agency to conduct any activity that is otherwise permissible under applicable state and federal law or regulation and that—

(1) has been determined by the FDIC pursuant to 12 CFR 362.4(c)(i)–(ii)(A) not to present a significant risk to the affected deposit insurance fund;

(2) is permissible for a federally licensed branch but the OCC imposes a quantitative limitation on the conduct of such activity by the federal branch;

(3) is conducted as agent rather than as principal, provided that the activity is one that could be conducted by a state-chartered bank headquartered in the same state in which the branch or agency is licensed; or

(4) any other activity that the Board has determined may be conducted by any state-licensed branch or agency of a foreign bank without further application to the Board.

(c) *Contents of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) a brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(2) an analysis of the impact of the proposed activity on the condition of the U.S. operations of the foreign bank in general and of the branch or agency in particular, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) a resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management, authorizing the conduct of such activity and the filing of this application;

(4) if the activity is to be conducted by a state-licensed insured branch, a statement by the applicant of whether or not it is in compliance with 12 CFR 346.19 and 346.20, Pledge of Assets, and Asset Maintenance, respectively;

(5) if the activity is to be conducted by a state-licensed insured branch, statements by the applicant—

(i) that it has complied with all requirements of the Federal Deposit Insurance Corporation concerning an application to conduct the activity and the status of the application, including a copy of the FDIC's disposition of such application, if available, and

(ii) explaining why the activity will pose no significant risk to the deposit insurance fund; and

(6) any other information that the Reserve Bank deems appropriate.

(d) *Factors considered in determination.*

(1) The Board shall consider the following factors in determining whether a proposed activity is consistent with sound banking practice:

(A) the types of risks, if any, the activity poses to the U.S. operations of the foreign banking organization in general and the branch or agency in particular;

(B) if the activity poses any such risks, the magnitude of each risk; and

(C) if a risk is not de minimis, the actual or proposed procedures to control and minimize the risk.

(2) Each of the factors set forth in paragraph (d)(1) of this section shall be evaluated in light of the financial condition of the foreign bank in general and the branch or agency in particular and the volume of the activity.

(e) *Application procedures.* Applications pursuant to this section shall be filed with the responsible Reserve Bank for the foreign bank. An application shall not be deemed complete until it contains all the information requested by the Reserve Bank and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific conditions or limitations.

(f) *Divestiture or cessation.*

(1) In the event that an applicant's application for permission to continue to conduct an activity is not approved by the Board or, if applicable, the FDIC, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the responsible Reserve Bank within 60 days of the disapproval. The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity and shall include a projected timetable describing how long the divestiture or cessation is expected to take. Divestitures or cessation shall be complete within one year from the date of the disapproval, or within such shorter period of time as the Board shall direct.

(2) In the event that a foreign bank operating a state branch or agency chooses not to apply to the Board for permission to continue to conduct an activity that is not permissible for a federal branch or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction, the foreign bank shall submit a written plan of divestiture or cessation, in conformance with section 211.29(f)(1), of this part within 60 days of the effective date of this part or of such change or decision.

10. *Effective March 25, 1996, section 211.30 is added to read as follows:*

SECTION 211.30—Criteria for Evaluating the U.S. Operations of Foreign Banks Not Subject to Consolidated Supervision

(a) *General.* Pursuant to the Foreign Bank Supervision Enhancement Act, Pub.L. 102-242, 105 Stat. 2286 (1991), the Board shall develop and publish criteria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis.

(b) *Criteria.* Following a determination by the Board that, having taken into account the standards set forth in section 211.24(c)(1) of this subpart, a foreign bank is not subject to comprehensive, consolidated supervision by its home-country supervisor, the Board shall consider the following criteria in determining whether the foreign bank's U.S. operations should be permitted to continue and, if so, whether any supervisory constraints should be placed upon the bank in connection with those operations:

(1) the proportion of the foreign bank's total assets and total liabilities that are located or booked in its home country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere;

(2) the extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home-country supervisor;

(3) whether the appropriate authorities in the home country of such foreign bank are actively working to establish arrangements for the comprehensive, consolidated supervision of such bank and whether demonstrable progress is being made;

(4) whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable its management properly to oversee its worldwide operations;
(5) whether the foreign bank's home-country supervisor has any objection to the bank continuing to operate in the United States;
(6) whether the foreign bank's home-country supervisor and the home-country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;
(7) the relationship of the U.S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of amounts due to its U.S. offices from the foreign bank's non-U.S. offices;
(8) the soundness of the foreign bank's overall financial condition;
(9) the managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors and the integrity of its principal shareholders;
(10) the scope and frequency of external audits of the foreign bank;
(11) the operating record of the foreign bank generally and its role in the banking system in its home country;
(12) the foreign bank's record of compliance with relevant laws, as well as the adequacy of its money-laundering controls and procedures, in respect of its worldwide operations;
(13) the operating record of the U.S. offices of the foreign bank;
(14) the views and recommendations of the Office of the Comptroller of the Currency or the state banking regulators in those states in which the foreign bank has operations, as appropriate;
(15) whether the foreign bank, if requested, has provided the Board with adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the International Banking Act, the Bank Holding Company Act, and other applicable federal banking statutes; and
(16) any other information relevant to the safety and soundness of the U.S. operations of the foreign bank.

(c) *Restrictions on U.S. operations.*
(1) *Terms of agreement.* Any foreign bank that the Board determines is not subject to comprehensive supervision or regulation on a consolidated basis by its home-country supervisor may be required to enter into an agreement to conduct its U.S. operations subject to such restrictions as the Board, having considered the criteria set forth in paragraph (b) of this section, determines to be appropriate in order to ensure the safety and soundness of its U.S. operations.
(2) *Failure to enter into or comply with agreement.* A foreign bank that is required by the Board to enter into an agreement pursuant to paragraph (c)(1) of this section and either fails to do so or fails to comply with the terms of such agreement may be subject to enforcement action in order to ensure safe and sound banking operations under 12 USC 1818, or to termination or a recommendation for termination of its U.S. operations under section 211.25(a) and (e) of this subpart and section (7)(e) of the IBA (12 USC 3105(e)).

Board of Governors of the Federal Reserve System

Amendments and Corrections to Regulation Z Truth in Lending November 1995*

1. *Effective September 25, 1995, paragraph (c)(1) of appendix K is revised to read as follows:*

* * * * *

Assumed annual dwelling appreciation rate:

4%

P_{10} = Min (103,385.84, 137,662.72)

$$30{,}000(1 + i)^{10-0} + \sum_{j=0}^{9} 0(1 + i)^{10-j}$$

$$= 103{,}385.84$$

i = .1317069438

Total-annual-loan-cost rate

(100(.1317069438 × 1)) = 13.17%

TRUTH IN LENDING ACT

2. *Effective September 30, 1995, section 106(a) was amended by adding a third sentence and a new paragraph (6) to read as follows:*

* * * The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges. * * *

* * * * *

(6) Borrower-paid mortgage broker fees, including fees paid directly to the broker or the lender (for delivery to the broker) whether such fees are paid in cash or financed.*

3. *Effective September 30, 1995, section 106(d)(3) was added to read as follows:*

* * * * *

(3) Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.

4. *Effective September 30, 1995, section 106(e), paragraphs (2) and (5), were amended to read as follows:*

* * * * *

(2) Fees for preparation of loan-related documents.

* * * * *

(5) Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing.

* * * * *

5. *Effective September 30, 1995, section 106(f) was added to read as follows:*

(f) *Tolerances for accuracy.* In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of

* A complete Regulation Z, as amended effective September 25, 1995, consists of—
- the regulation pamphlet dated July 1995 (see inside front cover) and
- this slip sheet.

* Paragraph (6) is effective on the earlier of—
- 60 days after the date on which the Board of Governors of the Federal Reserve System issues final regulations implementing pargagraph (6) or
- September 30, 1996.

the finance charge and other disclosures affected by any finance charge—

(1) shall be treated as being accurate for purposes of this title if the amount disclosed as the finance charge—

(A) does not vary from the actual finance charge by more than $100; or

(B) is greater than the amount required to be disclosed under this title; and

(2) shall be treated as being accurate for purposes of section 125 if—

(A) except as provided in subparagraph (B), the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one-half of one percent of the total amount of credit extended; or

(B) in case of a transaction, other than a mortgage referred to in section 103(aa), which—

(i) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in section 103(w), or is any subsequent refinancing of such a transaction; and

(ii) does not provide any new consolidation or new advance;

if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one percent of the total amount of credit extended.

6. *Effective September 30, 1995, a sentence was added to the end of section 121(c) to read as follows:*

* * * In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this title if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.

7. *Effective September 30, 1995, sections 125(h) and (i) were added to read as follows:*

(h) *Limitation on rescission.* An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Board, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.

(i) *Rescission rights in foreclosure.*

(1) Notwithstanding section 139, and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if—

(A) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Board or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

(2) Notwithstanding section 106(f), and subject to the time period provided in subsection (f), for the purposes of exer-

cising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $35 or is greater than the amount required to be disclosed under this title.

(3) Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

(4) This subsection shall apply to all consumer credit transactions in existence or consummated on or after the date of the enactment of the Truth in Lending Act Amendments of 1995.

8. *Effective September 30, 1995, section 130(a)(2)(A)(iii) was added to read as follows:*

* * * , or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than $200 or greater than $2,000; or

* * * * *

9. *Effective September 30, 1995, sections 131(e) and (f) were added to read as follows:*

(e) *Liability of assignee for consumer credit transactions secured by real property.*

(1) Except as otherwise specifically provided in this title, any civil action against a creditor for a violation of this title, and any proceeding under section 108 against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if—

(A) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this title; and

(B) the assignment to the assignee was voluntary.

(2) For the purpose of this section, a violation is apparent on the face of the disclosure statement if—

(A) the disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement, any itemization of the amount financed, the note, or any other disclosure of disbursement; or

(B) the disclosure statement does not use the terms or format required to be used by this title.

(f) *Treatment of servicer.*

(1) A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is or was the owner of the obligation.

(2) A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

(3) For purposes of this subsection, the term "servicer" has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.

(4) This subsection shall apply to all consumer credit transactions in existence or consummated on or after the

date of the enactment of the Truth in Lending Act Amendments of 1995.

10. *Effective September 30, 1995, section 139 was added to read as follows:*

SECTION 139—Certain Limitations on Liability

(a) *Limitations on liability.* For any consumer credit transaction subject to this title that is consummated before the date of the enactment of the Truth in Lending Act Amendments of 1995, a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under this title for, and a consumer shall have no extended rescission rights under section 125(f) with respect to—

(1) the creditor's treatment, for disclosure purposes, of—

(A) taxes described in section 106(d)(3);

(B) fees described in section 106(e)(2) and (5);

(C) fees and amounts referred to in the 3rd sentence of section 106(a); or

(D) borrower-paid mortgage broker fees referred to in section 106(a)(6);

(2) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 125 if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Board or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice; or

(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed—

(A) may be treated as accurate for purposes of this title if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $200;

(B) may, under section 106(f)(2), be treated as accurate for purposes of section 125; or

(C) is greater than the amount or percentage required to be disclosed under this title.

(b) *Exceptions.*—Subsection (a) shall not apply to—

(1) any individual action or counterclaim brought under this title which was filed before June 1, 1995;

(2) any class action brought under this title for which a final order certifying a class was entered before January 1, 1995;

(3) the named individual plaintiffs in any class action brought under this title which was filed before June 1, 1995; or

(4) any consumer credit transaction with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995.

Board of Governors of the Federal Reserve System

Amendments to Regulation BB Community Reinvestment

July 1996*

1. *Effective January 1, 1996, section 228.12(h)(3) is revised to read as follows:*

* * * * *

(3) activities that promote economic development by financing businesses or farms that meet the size eligibility standards of 13 CFR 121.802(a)(2) and (3) or have gross annual revenues of $1 million or less; or

* * * * *

2. *Effective January 1, 1996, section 228.27(h) is revised to read as follows:*

(h) *Plan amendment.* During the term of a plan, a bank may request the Board to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

3. *Effective January 1, 1996, section 228.51(a) is revised to read as follows:*

(a) *Effective date.* Sections of this part become applicable over a period of time in accordance with the schedule set forth in paragraph (c) of this section. Notwithstanding paragraph (c) of this section, when a bank, either voluntarily or mandatorily, becomes subject to the performance tests and standards of sections 228.21 through 228.27, the bank must comply with all the pertinent requirements of sections 228.11 through 228.44, and no longer must comply with the requirements of sections 228.3 through 228.7.

* A complete Regulation BB, as amended effective January 1, 1996, consists of—

- the regulation pamphlet dated July 1995 (see inside front cover) and
- this slip sheet.

Board of Governors of the Federal Reserve System

Amendments to the Official Staff Commentary on Regulation B, Equal Credit Opportunity August 1995*

1. *Effective June 5, 1995, comment 2(c)(1)(i)-1 is added to read as follows:*

1. *Application for credit.* A refusal to refinance or extend the term of a business or other loan is adverse action if the applicant applied in accordance with the creditor's procedures.

2. *Effective April 1, 1991, comment 2(c)(2)(ii)-2 is added to read as follows:*

2. *Current delinquency or default.* The term "adverse action" does not include a creditor's termination of an account when the accountholder is currently in default or delinquent on that account. Notification in accordance with section 202.9 of the regulation generally is required, however, if the creditor's action is based on a past delinquency or default on the account.

3. *Effective June 5, 1995, comment 2(c)(2)(iii)-2 is added to read as follows:*

2. *Application for increase in available credit.* A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action, except when the refusal is a denial of an application, submitted in accordance with the creditor's procedures, for an increase in the amount of credit.

4. *Effective June 5, 1995, the title for comment 2(p) is amended to read "Empirically Derived and Other Credit Scoring Systems," and comments 2(p)-3 and -4 are added to read as follows:*

3. *Pooled-data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in paragraph (p)(1)(i) through (iv) of this section are met.

4. *Effects test and disparate treatment.* An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process. In addition, neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test. (See comment 6(a)-2 for a discussion of the effects test).

5. *Effective June 5, 1995, comment 4-1 is amended by adding four sentences at the end to read as follows:*

* * * Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate. Disparate treatment would be found, for example, where a creditor requires a mi-

* The complete commentary, as amended effective June 5, 1995, consists of—
- the pamphlet dated May 1990 (see inside cover) and
- this slip sheet.

Items 1, 3, 4, 5, 7, 8, 9, 10, 11, and 15 are new. The other items were included in the slip sheet dated August 1992.

nority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant. Disparate treatment also would be found where a creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant. Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

6. *Effective April 7, 1992, comment 5(b)(2)-3 is added to read as follows:.*

3. *Collecting information on behalf of creditors.* Loan brokers, correspondents, or other persons do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another federal or state statute or regulation requiring data collection.

7. *Effective June 5, 1995, comments on section 202.5a are added to read as follows:*

SECTION 202.5a—Rules on Providing Appraisal Reports

5a(a) Providing Appraisals

1. *Coverage.* This section covers applications for credit to be secured by a lien on a dwelling, as that term is defined in section 202.5a(c), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to finance a child's education).

2. *Renewals.* If an applicant requests that a creditor renew an existing extension of credit, and the creditor obtains a new appraisal report to evaluate the request, this section applies. This section does not apply to a renewal request if the creditor uses the appraisal report previously obtained in connection with the decision to grant credit.

Paragraph 5a(a)(2)(i) Notice

1. *Multiple applicants.* When an application that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

Paragraph 5a(a)(2)(ii) Delivery

1. *Reimbursement.* Creditors may charge for photocopy and postage costs incurred in providing a copy of the appraisal report, unless prohibited by state or other law. If the consumer has already paid for the report—for example, as part of an application fee—the creditor may not require additional fees for the appraisal (other than photocopy and postage costs).

5a(c) Definitions

1. *Appraisal reports.* Examples of appraisal reports are—

i. a report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of value
ii. a document prepared by the creditor's staff which assigns value to the property, if a third-party appraisal report has not been used
iii. an internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes)

2. *Other reports.* The term "appraisal report" does not cover all documents relating to the value of the applicant's property. Examples of reports not covered are—

i. internal documents, if a third-party

appraisal report was used to establish the value of the property

ii. governmental-agency statements of appraised value

iii. valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes

8. *Effective June 5, 1995, the first sentence of comment 6(a)-2 is amended to read as follows:*

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under title VII of the Civil Rights Act of 1964 (42 USC 2000e et seq.), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 USC 2000e-2). * * *

9. *Effective June 5, 1995, comment 6(b)(1)-1 is amended by adding three sentences at the end to read as follows:*

* * * Except to the extent necessary to determine rights and remedies for a specific credit transaction, a creditor that offers joint credit may not take the applicants' marital status into account in credit evaluations. Because it is unlawful for creditors to take marital status into account, creditors are barred from applying different standards in evaluating married and unmarried applicants. In making credit decisions, creditors may not treat joint applicants differently based on the existence, the absence, or the likelihood of a marital relationship between the parties.

10. *Effective June 5, 1995, comments 8(a)-5 and -6 are added to read as follows:*

5. *Determining need.* In designing a special-purpose program under section 202.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies. For example, a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special-purpose credit program for low-income minority borrowers.

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

11. *Effective June 5, 1995, comment 9-5 is added to read as follows:*

5. *Prequalification and preapproval programs.* Whether a creditor must provide a notice of action taken for a prequalification or preapproval request depends on the creditor's response to the request, as discussed in the commentary to section 202.2(f). For instance, a creditor may treat the request as an inquiry if the creditor provides general information such as loan terms and the maximum amount a consumer could borrow under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse-action notice requirements of section 202.9 if, after evaluating information, the creditor decides

that it will not approve the request and communicates that decision to the consumer. For example, if in reviewing a request for prequalification, a creditor tells the consumer that it would not approve an application for a mortgage because of bankruptcy in the consumer's record, the creditor has denied an application for credit.

12. *Effective April 1, 1991, comment 11(a)-2 is added to read as follows:*

2. *Preemption determination—Ohio.* Effective July 23, 1990, the Board has determined that the following provision in the state law of Ohio is preempted by the federal law:

- Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring system; permits without limitation the consideration of age in real estate transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state law.

13. *Effective April 7, 1992, comment 13(b)-4 is amended to read as follows:*

4. *Applications through loan-shopping services.* When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C, which generally requires creditors to report, among other things, the sex and race or national origin of an applicant on brokered applications or applications received through a correspondent.

14. *Effective April 7, 1992, comment 1 on appendix B is amended to read as follows:*

1. *FHLMC/FNMA form—residential loan application.* The uniform residential loan application form (FHLMC 65/FNMA 1003), including supplemental form (FHLMC 65A/FNMA 1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated May 1991 may be used by creditors without violating this regulation even though the form's listing of race or national origin categories in the "Information for Government Monitoring Purposes" section differs from the classifications currently specified in section 202.13(a)(1). The classifications used on the FNMA-FHLMC form are those required by the U.S. Office of Management and Budget for notation of race and ethnicity by federal programs in their administrative reporting and statistical activities. Creditors that are governed by the monitoring requirements of Regulation B (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 section 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 section 202.13(d) or by the Home Mortgage Disclosure Act (HMDA) may use the form as issued, in compliance with that substitute program or HMDA.

15. *Effective June 5, 1995, a comment on appendix C is added to read as follows:*

APPENDIX C—Sample Notification Forms

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