

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 7713]
[September 18, 1975]

REGULATION Z

- Amendment Regarding Disclosures on Cash Advance Checks
— Proposed Amendment on Disclosure of Real Estate Closing Costs

To All Member Banks, and Others Concerned,
in the Second Federal Reserve District:

Cash advance checks

Following is the text of a statement issued September 15 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today issued an amendment to its Truth in Lending Regulation Z that requires creditors to disclose in a clear and conspicuous manner the credit terms involved in the use of cash advance checks.

The amendment is effective January 1, 1976. The Board proposed such an amendment last December 18 and clarifying changes were made in the light of comment received from the public.

A number of banks operating credit card plans have been sending blank checks to credit card holders that can be used to obtain cash advances on a credit card account. Under the amendment, disclosures specifically related to the charges imposed when these checks are used will be required the first time the cash advance check or other similar credit device is sent to a customer.

In submitting the amendment for publication in the *Federal Register*, the Board of Governors made the following additional statement:

On December 27, 1974, the Board of Governors published for comment in the *Federal Register* (39 F. R. 44779) a proposed amendment to the open-end credit disclosure requirements of Regulation Z (§ 226.7(f)). The proposal required open-end creditors sending to their credit cardholders blank checks or other credit devices which are intended to be used in connection with such open-end credit accounts to include a clear disclosure statement of the charges and other pertinent credit information specifically related to the use of blank checks or other credit devices delivered. The proposed amendment required such disclosure only the first time the blank checks or other credit devices were sent to the customer, but not when later renewed or resupplied.

Following consideration of 44 comment letters received on this proposal, the Board revised the proposed language and hereby promulgates it in final form. Two significant clarifications have been made to the regulatory requirement as proposed: The language of the regulation has been clarified to indicate that the term "credit devices" does not apply to credit cards and to indicate that the disclosure requirement is not applicable to checks used in conjunction with a demand deposit account, even though such checks may also activate a cash advance under an open-end credit account.

In response to concerns over the need for such disclosures where these blank checks have been provided to a customer shortly after the opening of an account, the regulation has been revised to indicate that the

disclosures need not be made unless the blank checks are mailed or delivered to the customer subsequent to 30 days after the delivery of the initial open-end credit disclosures. In response to questions concerning the location of the disclosures accompanying the blank checks, the revised regulation stipulates that the disclosure consist of a single written statement which shall not appear on any promotional material mailed or delivered at the same time. The disclosure statement may be printed on a separate sheet or printed on a booklet containing the checks; the statement need not be repeated on each blank check. Questions also were raised concerning which disclosures of § 226.7(a) should be made in connection with these blank checks. The pertinent disclosure provisions are those contained in §§ 226.7(a)(1), (2), (3), and (4). The revised regulation provides that the disclosure statement accompanying the blank checks may be limited to the provisions of §§ 226.7(a)(1), (2), (3), and (4). Alternatively, the revised regulation provides that a full statement of the requirements of § 226.7(a) be provided with the provisions of subsections (1), (2), (3), and (4) clearly and conspicuously referenced on or accompanying that statement. For example, if the full statement of the provisions of § 226.7(a) is subdivided into terms covering credit sale and cash advance transactions, reference may be made in the accompanying material to the terms covering cash advance transactions. Likewise, if the terms covering cash advance transactions are numbered, the accompanying material may refer to the appropriate numbered terms.

Enclosed is a copy of the amendment, which becomes effective January 1, 1976. Additional copies will be furnished upon request.

Closing costs

Following is the text of a statement issued September 16 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today proposed to amend its Regulation Z — Truth in Lending — to require disclosure of the closing costs in certain real property transactions not covered by the Real Estate Settlement Procedures Act (RESPA).

Comment will be received by the Board through October 15, 1975.

The amendment would apply to credit transactions where the lender retains or acquires an interest in the real property involved as collateral, except for mortgages covered by RESPA.

An example of the type of credit extension covered is a loan for home improvements, when the home is used as security for the loan.

The proposed amendment to Regulation Z would implement a section of the recently passed Public Law 93-495 that calls for a statement of closing costs to be made in accordance with the requirements of the Truth in Lending Act. Closing costs are defined in the draft amendment as any fee or charge, other than a down payment, paid in cash by the customer at the time of, or before, settlement of a real property transaction, whether or not the fee constitutes a finance charge under the regulation. The disclosure requirement is intended to provide the customer with knowledge of the total of the customer's closing costs.

In credit sales transactions, the proposed amendment would require the disclosure to be made before the customer makes any down payment. In other transactions, disclosure would be required at the time a lender makes a commitment.

Printed on the following pages is the text of the proposed amendment. Comments thereon should be submitted by October 15 and may be sent to our Bank Regulations Department.

PAUL A. VOLCKER,
President.

[Reg. Z]

[12 CFR PART 226]

TRUTH IN LENDING

Notice of Proposed Rulemaking Relating to Disclosure of Closing Costs

On October 28, 1974, Congress enacted Public Law 93-495 containing several amendments to the Truth in Lending Act. Section 409 of Public Law 93-495 provides for the disclosure of "closing costs" to be incurred by the customer in consumer credit transactions. The Board of Governors is today publishing for public comment certain amendments to Regulation Z designed to implement Section 409.

Section 226.8(r), the section proposed to require disclosure of closing costs, applies only to real property transactions, *i.e.*, transactions in which a security interest in real property is or will be retained or acquired by the creditor. The Board believes that this limitation is appropriate at this time because in other types of transactions closing costs are generally either not present at all or are minimal in amount and not subject to change among creditors. The Board, however, specifically invites comments on the restriction of the section to real property transactions.

The term "closing cost" is defined to include any charge or fee, other than downpayment, which is paid in cash by the customer at or prior to closing. "Closing" is defined as the date "bargained for consideration" is exchanged between the parties to the transaction.

Section 226.8(r) also excludes any transaction subject to the Real Estate Settlement Procedures Act and the regulations adopted thereunder by the Department of Housing and Urban Development, since disclosure of closing costs is already required in such transactions.

The disclosure of closing costs is required to be made, in connection with real property credit sales, prior to the making of any downpayment. With respect to other transactions, disclosure is required at the time a lender commitment is given. Commitment is defined to mean an oral or written creditor agreement to enter into a specific transaction, whether or not such agreement is conditioned or binding on the customer.

With respect to the way in which disclosures are made, the Board proposes to adhere to its general policy of not specifying forms but allowing creditors to design their own forms subject only to Regulation Z's requirements as to clarity and sequence. Disclosure would be permitted on a separate form, or could be given with the other Truth in Lending disclosures if they are given at the time disclosure of closing costs would otherwise be required.

Where disclosures are required to be made but exact information is not known, estimates may be used under the provisions of § 226.6(f).

The proposed regulations include five new definitions to be included in § 226.2. Since the Board is currently adding several other definitions in this section, the paragraph letters have been left blank at this time.

Should the Board adopt the proposed amendment after considering the comments received on it, an effective date would be set far enough in advance to allow for the orderly change of forms where necessary.

Pursuant to the authority granted in 15 U.S.C. § 1604 (1970), the Board proposes to amend Regulation Z, 12 C.F.R. Part 226, as follows:

1. § 226.2 would be amended as follows:

SECTION 226.2 — DEFINITIONS AND RULES OF CONSTRUCTION

* * *

(-) "Closing" means the date on which the bargained for consideration is exchanged between the parties to any transaction, irrespective of when the transaction is consummated.

(-) "Closing cost" means any fee, charge or other expense, other than a downpayment, paid in cash by the customer, or on the customer's behalf, at, or prior to, a closing, as a condition to the transaction, whether or not such fee, charge or expense constitutes a finance charge.

(-) "Commitment" means an agreement, whether or not in writing, by a creditor to enter into a specified consumer credit transaction with a customer, whether or not such agreement is subject to any conditions and whether or not such agreement is binding upon the customer.

(-) "Downpayment" means a payment made at or prior to consummation of a transaction which is or will be applied wholly to the cash price of property or services purchased.

(-) "RESPA" means the Real Estate Settlement Procedures Act of 1974 together with the regulations promulgated thereunder by the Secretary of Housing and Urban Development.

2. § 226.8 would be amended as follows:

**SECTION 226.8 — CREDIT OTHER THAN
OPEN END — SPECIFIC DISCLOSURES**

(a) **General rule.** Any creditor when extending credit other than open end credit shall, in accordance with § 226.6 and to the extent applicable, make the disclosures required by this section with respect to any transaction consummated on or after July 1, 1969. Except as otherwise provided in this section, such disclosures shall be made before the transaction is consummated. At the time disclosures are made, the creditor shall furnish the customer with a duplicate of the instrument or a statement by which the required disclosures are made and on which the creditor is identified. Except as provided in paragraph (r) of this section, all of the disclosures shall be made together on either:

(1) The note or other instrument evidencing the obligation on the same side of the page and above the place for the customer's signature; or

(2) One side of a separate statement which identifies the transaction. * * *

(r) **Disclosure of closing costs.** The creditor in any real property transaction subject to this section shall disclose to the customer all closing costs to be paid by the customer in connection with such transaction in accordance with the following provisions:

(1) The disclosure required by this paragraph shall include the total amount of closing costs using the term "closing costs" and, where there is more than one component cost, a description of each. Such disclosures shall be made:

(i) on one side of a separate statement, or

(ii) together with the other disclosures required by this section, in which case the disclosures required by this paragraph shall, if required to be itemized, either be listed separately, or to the extent that they are itemized elsewhere on such disclosure statement, referenced as being a closing cost by use of an asterisk or other appropriate means.

(2) In the case of any credit sale, the disclosures required by this paragraph shall be made prior to the making of any downpayment.

(3) In the case of any extension of credit other than a credit sale, the disclosures required by this paragraph shall be made at the time the creditor makes a commitment in connection with that transaction.

(4) Notwithstanding the provisions of § 226.8(r)(2) and (3), the disclosures required by this paragraph shall be made before the transaction is consummated.

(5) This paragraph does not apply to any transaction to which the disclosure requirements of RESPA are applicable.

3. This notice is published pursuant to § 553(b) of Title 5, United States Code, and § 262.2(a) of the Rules of Procedure of the Board of Governors of the Federal Reserve System (12 C.F.R. 262.2(a)).

Interested persons are invited to submit relevant data, views, or arguments concerning this proposal. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than October 15, 1975. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.

Board of Governors of the Federal Reserve System

TRUTH IN LENDING

AMENDMENT TO REGULATION Z

Effective January 1, 1976, § 226.7(f) is added as set forth below:

SECTION 226.7—OPEN-END CREDIT ACCOUNTS—SPECIFIC DISCLOSURES

* * *

(f) Supplemental credit devices for use in open-end credit accounts. If, subsequent to 30 days after delivering the disclosures required under paragraph (a) of this section, a creditor of an open-end credit account mails or delivers, other than as a renewal or resupply, a blank check, payee designated check, blank draft or order or other similar credit device other than a credit card, to an existing customer or cardholder for use in connection with such account, such device shall be accompanied by a single written statement setting forth clearly and conspicuously those disclosures of paragraph (a) of this section which specifically relate to the use of such device. Such disclosure statement shall either be limited to the disclosures of paragraphs (a)(1), (2), (3), and (4) of this section or contain all disclosures required of such paragraph with the pertinent disclosures clearly and conspicuously referenced on or accompanying that disclosure statement. Such disclosure statement shall not appear on any promotional material mailed or delivered at the same time. The requirements of this paragraph shall not be applicable to checks to be used in conjunction with a checking account even though such checks may also activate a cash advance under an open-end credit account.

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