

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 7719]
[September 29, 1975]

FAIR CREDIT BILLING

Text of Amendments to Regulation Z

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

Our Circular No. 7712, dated September 18, 1975, contained the text of a press statement issued on September 15 by the Board of Governors of the Federal Reserve System announcing the adoption of several amendments to its Regulation Z—Truth in Lending—that are designed to help consumers resolve credit billing disputes promptly and fairly.

Enclosed is a copy of the amendments to Regulation Z, which implement the relevant sections of the Truth in Lending Act, effective October 28, 1975. In submitting the amendments for publication in the *Federal Register*, the Board made the following statement:

On May 5, 1975, the Board of Governors published for comment in the *Federal Register* (40 F.R. 19489) proposed regulations implementing the Fair Credit Billing Act (Title III of Pub. L. 93-495). The comment period on this proposal was initially set to terminate on May 30 and was subsequently extended through June 20, 1975 (40 F.R. 23896). On June 24, 1975, the Board of Governors published for comment in the *Federal Register* (40 F.R. 26571) proposed regulations to implement § 411 of Title IV of Pub. L. 93-495, which, though not technically a part of the Fair Credit Billing Act, is related to it in some respects and shares the same effective date. The comment period on this proposal terminated on July 18, 1975.

Following the receipt of approximately 300 comments on the proposal published on May 5 and approximately 110 comments on the proposal published on June 24, the Board on July 24, 1975, announced in the *Federal Register* (40 F.R. 30986) its intent to publish for comment revised regulations implementing these same statutory provisions and to hold informal hearings August 5 and 6, 1975, on these revised proposals.

On August 1, 1975, the Board published in the *Federal Register* (40 F.R. 32350) the revised regulations referenced in the July 24 publication. The comment period on these revised regulations, initially set to terminate on August 12, was extended to August 18, 1975.

On August 5, public hearings were held regarding the revised proposal. Ten interested parties were represented by witnesses at these hearings. Approximately 150 written comments were received and analyzed by the Board.

In response to the testimony and written comments received by the Board, some changes in the provisions previously published were made. Many are of a technical nature. An explanation of the most substantive changes follows:

1. *Transition Periods*—Transition periods for compliance with certain portions of the regulation have been provided in § 226.6(k). These portions generally are those which require the printing of new forms or substantial technical program or operational changes which cannot be accomplished by October 28, 1975. In most cases the transition period is 6 months. The transition section covers the new disclosure requirements for periodic statements including showing dates of payment, indicating credit balances, and identifying the address to which billing errors must be sent. The prohibition against disclosing inconsistent State laws will also be delayed for 6 months to allow creditors to use up existing forms.

2. *Short Notice of Rights*—Many comments were made about the length of the notice of customer rights and creditor responsibilities required by §§ 226.7(a)(9) and (d). A shortened version of this notice may be included with every periodic statement as an alternative to the twice-yearly mailing of the full notice, provided that the creditor must supply the customer with a full notice upon request or whenever the customer submits a proper written notification of a billing error.

3. *Time for Payments After Resolution of a Billing Error*—Earlier drafts of the regulation would have required creditors to provide a free period for payment without the imposition of finance charges after com-

pletion of the error resolution procedure, even when the creditor did not make an error or did not offer a free ride period generally. The regulation in § 226.14(b)(3) has been rewritten to require a free period only when the creditor has made an erroneous billing on the disputed item and the terms of the credit plan normally provide a free period for payment of such items. In all other cases the creditor must promptly notify the customer of how much is owed with regard to a disputed item after the completion of the error resolution procedure.

4. *Identification of Transactions*—Many comments were received citing computer reprogramming and other data collection problems which would make compliance with § 226.7(b)(1)(ii) impossible by October 28, 1975. In order to facilitate compliance the Board has provided a gradual phase-in of the full impact of this section. Until July 1, 1976, creditors will be able to identify transactions in the same way as is presently required.

By October 28, 1977, the section will be fully effective. At that time, the regulation requires creditors who bill "descriptively" on their periodic statements to provide a transaction date. In addition, for two-party creditors, a description of any goods or services purchased or, for three-party creditors, the merchant's name and the address where the transaction took place would be required. If any of the primarily required information is not available to the creditor despite the maintenance of procedures reasonably adapted to procure it in the first instance, a voucher number or identifying symbol which appears on the document evidencing the transaction must be disclosed.

Between July 1, 1976, and October 28, 1977, the creditor may in all cases substitute the date of debiting the transaction to the customer's account for the primarily required date if the latter date is unavailable. Also, the creditor may substitute a voucher number or other identifying symbol which appears on the document evidencing the transaction for the description of goods or services or the merchant's name and address when they are unavailable.

5. *Inconsistent State Laws*—Section 226.6(b)(2) has been revised to provide greater clarity and certainty for consumers and creditors.

The regulation now provides that any State credit billing law which differs from the error resolution procedure and credit reporting prohibitions of §§ 161 and 162 of the Act and their implementing provisions in the regulation is inconsistent and, thus, preempted in its entirety. This determination was made because of the many internal steps with varying time limits and other requirements which are found in the processes embodied in Federal and State law regarding billing error resolution procedures. To do otherwise would cause confusion among creditors and consumers alike, especially with respect to informing consumers of their rights and obligations regarding the resolution of disputes. As an exception to this rule, the regulation provides that any State law which allows the customer to make inquiry concerning a billing error after the time for doing so under the Act and the regulation has expired is not inconsistent, and thus is not preempted, *to the extent* that it allows such later inquiry. In those cases in which the State law allows such later inquiry, any inquiry submitted after the time allowed by Federal law has expired is to be handled under the State procedure.

With respect to the other provisions of the Act and regulation, a State law is not inconsistent with the Federal law if the creditor can comply with it without violating the Federal law.

The regulation prescribes limitations on notification to consumers of State law and sets up a procedure whereby a State may ask the Board for a determination that its law provides greater protection to consumers or is otherwise not inconsistent with Federal law.

6. *Discounts for Payments in Cash*—The regulation provides that a discount offered by merchants of up to five per cent of the tagged, posted, or advertised price of an item for payment in cash in lieu of use of a credit card does not constitute a finance charge for purposes of § 226.4. However, if an amount is added to the tagged, posted or advertised price of an item and imposed on a customer who pays by use of a credit card, such amount is not a discount and is to be treated as a finance charge subject to § 226.4 and disclosed in accordance with § 226.7(e).

The major provisions of the regulation provide:

1. A procedure to be used in attempting to correct alleged billing errors in open end credit accounts. The regulation imposes a forfeiture penalty on creditors who fail to comply with the procedure whether or not a billing error has in fact been made. The regulation also defines a billing error and specifies procedures for customers to follow in raising billing inquiries.

2. For the method of treating minimum periodic payments and finance charges with respect to the disputed amount for the period during which the error solution procedure is in operation.

3. Prohibitions against threatening to report or in fact reporting adversely regarding a customer's credit standing during the pendency of the dispute resolution procedure; and provides for correction or updating of adverse credit reports made on disputed amounts, in certain cases, to show the fact that the amount is in dispute.

4. That in those cases in which an open end credit account provides a time period during which the customer can make payment without incurring an additional finance charge, with certain exceptions, the periodic statement must be mailed or delivered to the customer at least 14 days before the date the payment is due.

5. For crediting payments made on an open end account as of the date of its receipt by the creditor at the creditor's designated location. In certain circumstances creditors who cannot meet the requirements of the regulation because of operational limitations must post payments promptly (in no case more than 5 days from receipt), until October 28, 1976. Provision is also made for crediting payments received at a creditor's branch or other remote location within 5 days of receipt by the creditor and for refunding or crediting any finance charges imposed because the creditor failed to comply with the section.

6. A system for refunding or crediting excess payments made by customers.

7. For prompt notification of a creditor by a seller of credit refunds made for returned goods or forgiveness of debt for services and prompt crediting of such refunds by the creditor.

8. That a discount for use of cash or similar means of payment in lieu of use of a credit card of up to five per cent of the tag, posted or otherwise generally available price offered by a merchant does not constitute a finance charge. The discount must be available to all customers and be disclosed as provided in the regulation. Agreements or contracts by credit card issuers prohibiting merchants from offering such discounts are prohibited, and within one month of the effective date of the regulation card issuers must notify all merchants with whom they have such prohibited agreements that they are no longer in effect.

9. That a credit card issuer may not require a merchant who honors its card to maintain a deposit account with the card issuer or procure any other service from the card issuer not essential to the credit card plan. Any card issuers who do have such prohibited agreements must, within one month of the regulation's effective date, inform the merchant that the agreement is no longer in effect.

10. That a card issuer may not offset the customer's indebtedness against the cardholder's funds held by the card issuer on deposit except as a means of periodic payment agreed to by the customer or pursuant to a court order under a procedure constitutionally available to all creditors generally.

11. That, with certain limitations, a customer may assert against the card issuer claims and defenses he may have regarding goods or services purchased by use of a credit card and for which he cannot obtain satisfaction from the seller.

12. A method for dealing with and reconciling with the Act and the regulation State laws which are similar to the regulation but different in some respects. A method of determining whether such laws are consistent with the Act and regulation is prescribed.

13. The minimum disclosures necessary to identify transactions which are billed on a customer's periodic statement.

Regulations to implement § 409 of Title IV of Pub. L. 93-495 will be issued by the Board at a later date.

Any questions regarding these amendments may be directed to our Bank Regulations Department. Additional copies of the enclosure will be furnished upon request.

PAUL A. VOLCKER,
President.