

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 7817]
February 13, 1976]

PROPOSED RULEMAKING REGARDING UNFAIR OR DECEPTIVE PRACTICES BY BANKS

Preservation of Consumer Claims and Defenses in Credit Transactions

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

Following is the text of a statement issued February 3 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today requested comment on a proposed regulation issued by the Federal Trade Commission on the preservation of consumer claims and defenses in credit transactions.

Last November 14, the FTC proposed its rule for all creditors other than banks. Whenever the FTC issues a rule prohibiting unfair or deceptive acts or practices, the Board must promulgate a substantially similar rule for banks within 60 days unless it finds that such a rule is unnecessary.

Comment was requested by the Board through March 31. Copies of all comments should also be sent to the FTC.

The FTC's proposed rule would prohibit creditors other than banks to take or receive a consumer credit contract unless all consumer claims and defenses are preserved.

The Board is especially interested in comment addressing the following subjects:

1. Consumer benefits to be derived from the proposal.
2. Economic impact of the proposed regulation on the availability and cost of consumer credit.
3. Whether the acts or practices addressed by the Commission's proposal are unfair or deceptive when engaged in by banks.
4. Whether adoption of the Commission's proposal would seriously conflict with essential monetary and payments systems policies of the Board.
5. Specific operational problems which would be created by adoption of the Commission's proposal.
6. Alternative methods for dealing with the preservation of consumers' claims and defenses.

Enclosed is a copy of the proposal. Comments thereon should be submitted by March 31, and may be sent to our Bank Regulations Department.

Additional copies of this circular and the enclosure will be furnished upon request.

PAUL A. VOLCKER,
President.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[16 CFR Part 433]

[12 CFR Part 228]

UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Notice of FEDERAL TRADE COMMISSION Proposed Rule-making Which Could Require the Board to Promulgate Substantially Similar Regulations Applicable to Banks

On November 14, 1975, the Federal Trade Commission proposed the following amendment to its Trade Regulation Rule entitled "Preservation of Consumers' Claims and Defenses" (16 CFR 433.1 and 2):

Sec.

433.1 Definitions

433.2 Preservation of Consumers' Claims and Defenses, Unfair or Deceptive Acts or Practices.

AUTHORITY. The provisions of this Part 433 issued under 38 Stat. 717, as amended, 15 U.S.C. Section 41, et seq.

§ 433.1 Definitions.

(a) Person. An individual, corporation, or any other business organization.

(b) Consumer. A natural person who seeks or acquires goods or services for personal, family, or household use.

(c) Creditor. A person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis; Provided such person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer.

(d) Purchase money loan. A cash advance which is received by a consumer in return for a "Finance Charge" within the

meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who (1) refers consumers to the creditor or (2) is affiliated with the creditor by common control, contract, or business arrangement.

(e) Financing a sale. Extending credit to a consumer in connection with a "Credit Sale" within the meaning of the Truth in Lending Act and Regulation Z.

(f) Contract. Any oral or written agreement, formal or informal, between a creditor and a seller, which contemplates or provides for cooperative or concerted activity in connection with the sale of goods or services to consumers or the financing thereof.

(g) Business arrangement. Any understanding, procedure, course of dealing, or arrangement, formal or informal, between a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof.

(h) Credit card issuer. A person who extends to cardholders the right to use a credit card in connection with purchases of goods or services.

(i) Consumer credit contract. Any instrument which evidences or embodies a debt arising from a "Purchase Money Loan" transaction or a "financed sale" as defined in paragraphs (d) and (e).

(j) Seller. A person who, in the ordinary course of business, sells or leases goods or services to consumers.

§ 433.2 Preservation of Consumers' Claims and Defenses,
Unfair or Deceptive Acts or Practices.

In connection with any Purchase Money Loan (as that term is defined in § 433.1) or any sale or lease of goods or services in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair or deceptive act or practice within the meaning of Section 5 of that Act for a seller or a creditor, directly or indirectly, to take or receive a consumer credit contract which fails to contain the following provision in at least ten point, boldface type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT
IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH
THE DEBTOR COULD ASSERT AGAINST THE SELLER
OF GOODS OR SERVICES OBTAINED PURSUANT HERE-
TO OR WITH THE PROCEEDS HEREOF. RECOVERY
HEREUNDER BY THE DEBTOR SHALL NOT EXCEED
AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Section 18(f) of the Federal Trade Commission Act
(15 U.S.C. § 41 et seq., as amended by Public Law 93-637) provides
that, whenever the Federal Trade Commission prescribes a rule pro-
hibiting unfair or deceptive acts or practices, the Board of
Governors shall within 60 days after that rule takes effect promulgate
substantially similar regulations prohibiting substantially similar
acts or practices of banks, unless the Board finds either that such acts

or practices of banks are not unfair or deceptive or that implementation of similar regulations with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board.

Since the Board may be required to promulgate a regulation substantially similar to the Commission's proposed rule, the Board is initiating this rulemaking procedure by publishing the Commission's proposed rule for comment to assure that potentially affected banks are aware of the proposal, and are afforded the opportunity to comment, and to assure that the Board will have adequate time to consider the comments. The Commission's proposal would make it an unfair or deceptive act or practice for creditors other than banks to directly or indirectly take or receive any consumer credit contract which does not include a provision indicating that such contract is subject to all claims and defenses which the debtor could assert against the seller of the goods or services that were the subject of the contract or that were purchased with the proceeds of the contract. If the Board were to adopt a regulation substantially similar to the Commission's proposal, the definition of "creditor" would be revised to specifically include banks.

The Board invites comments from interested parties and is particularly interested in comments addressing the following subjects:

1. Consumer benefits to be derived from the proposal.
2. Economic impact of the proposed regulation on the availability and cost of consumer credit.

3. Whether the acts or practices addressed by the Commission's proposal are unfair or deceptive when engaged in by banks.
4. Whether adoption of the Commission's proposal would seriously conflict with essential monetary and payments systems policies of the Board.
5. Specific operational problems which would be created by adoption of the Commission's proposal.
6. Alternative methods for dealing with the preservation of consumer's claims and defenses.

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)). To aid in consideration of these matters by the Board, interested persons are invited to submit relevant data, views, or arguments in writing to the Office of the Secretary, the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 31, 1976. Such material will be made available for inspection upon request, except as provided in 12 C.F.R. § 261.6(a) of the Board's Rules Regarding Availability of Information.

Since the Board may be required to issue a regulation substantially similar to the rule ultimately adopted by the Federal Trade Commission, it is recommended that copies of comments also be sent directly to the Commission for consideration. Such comments

should be identified as "Holder in Due Course Comment" and addressed to the Special Assistant Director for Rulemaking, Federal Trade Commission, Washington, D.C. 20580.

By order of the Board of Governors, January 30, 1976.

(signed) Theodore E. Allison
Theodore E. Allison
Secretary of the Board

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