

FEDERAL RESERVE BANK  
OF NEW YORK

[ Circular No. 8152 ]  
July 26, 1977

AMENDMENTS TO REGULATION Z  
Clarification of Exemption for Cash-Payment Discounts

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

Following is the text of a statement issued July 21 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System has amended its Truth in Lending Regulation Z to clarify provisions that permit discounts for cash customers.

The amendments are effective immediately. They carry out provisions of Public Law 94-222 specifying that merchants may give discounts to customers who pay in cash (or by check or similar means) rather than by using a credit card. Such discounts need not be disclosed as a finance charge to those using credit cards. Discounts may not exceed 5 per cent of the credit card price.

The amendments adopted by the Board were substantially the same as amendments proposed for public comment in December.

The amendments allow merchants to use either a discount or a "two-tag" pricing system to indicate discounts for cash. Examples of pricing systems that may be used without being disclosed as a finance charge include:

1. A discount pricing system: the merchant posts or tags goods with a single price—the price charged if a credit card is used—and offers a 5 per cent (or less) discount off this price to cash customers.
2. A "two-tag" system: the merchant posts or tags goods with both a credit card and a cash price.
3. Another "two-tag" system: the merchant neither tags nor posts prices, but offers to accept from customers paying by cash a price 5 per cent (or less) lower than the price charged to customers using credit cards.

The amendments adopted also include a provision that the amount of any discount for cash is not, in the case of credit card users, a charge for credit under any State law, such as a usury or credit disclosure law.

In submitting the amendments for publication in the *Federal Register*, the Board of Governors issued the following explanatory notice:

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final Amendments.

**SUMMARY:** These amendments clarify the conditions under which merchants who offer discounts for payment by cash, check, or similar means, rather than by credit card, are exempt from disclosing such discounts as finance charges under § 226.4(i) of Regulation Z. The amendments implement Public Law 94-222 which distinguishes between discounts and surcharges, declares that surcharges are illegal until February 27, 1979, and provides that discounts qualifying for non-disclosure under § 226.4(i) of Regulation Z shall not be considered a charge for credit under State usury, disclosure, and other credit laws.

**EFFECTIVE DATE:** Immediately.

**FOR FURTHER INFORMATION CONTACT:** D. Edwin Schmelzer, Chief, Fair Credit Practices Section, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2412).

**SUPPLEMENTARY INFORMATION:** On December 28, 1976 the Board proposed to amend Part 226 (Regulation Z) to implement changes and clarifications made by Public Law 94-222. One of the purposes of that law was to clarify the fact that § 167 of the Truth in Lending Act (15 USC 1666(f)) was intended by Congress to exempt from disclosure certain discounts given to customers paying by cash, check, or similar means, but was not intended to provide a similar exemption for surcharges imposed upon users of credit cards. Public Law 94-222 not only stated that surcharges do not qualify for the § 167 exemption from disclosure, but also prohibited the imposition of surcharges on the users of credit cards for three years. The clarifying statutory amendments also provided that any discount qualifying for non-disclosure under § 167 shall not be considered a charge for credit under State usury, disclosure, and other credit laws.

**Discussion of Major Comments**

Most substantive comments focused upon three areas of concern. First, it was suggested that "regular price" be redefined so as to impose a more subjective standard

than proposed. Commenters proposed definitions related to the price that a merchant expects to receive without taking into account the method of payment which a customer uses. The Board has carefully considered the alternative ways of defining "regular price," since any meaningful and practical distinction between a discount and a surcharge ultimately depends upon establishing the standard, intermediate price. It is of paramount importance that however "regular price" is defined, it provide sufficient certainty for those who wish to offer or take advantage of discounts. The Board believes that an objective definition of that term will better encourage merchants to offer discounts to their customers, and will facilitate enforcement of the Congressional prohibition of surcharges. Consequently, the Board has decided to leave the proposed definition of "regular price" essentially unchanged.

A second area of concern involves potential conflicts with State law. A number of States require disclosure of the "cash price" or "cash sale price" when goods or services are purchased on credit. Commenters indicated that such laws may mean that periodic billing statements would have to disclose two prices for each transaction, one of which (cash price) may not be readily available to the card issuer. To the extent that this presents a problem, the Board does not believe the problem arises from requirements imposed by either Regulation Z or the Truth in Lending Act. Any needed remedy would be more appropriately fashioned by the governmental body imposing the requirement.

One commenter suggested that another area of potential conflict with State laws may exist to the extent that such laws prohibit or restrict the posting, advertising, or disclosure of gasoline prices on service station premises. Regulation Z requires that the availability of a discount be "clearly and conspicuously disclosed by a sign or display posted at or near each public entrance to the seller's place of business . . ." (§ 226.4(i)(1)(ii)). Because the suggested conflict does not affect retailers generally, the Board believes that it would be inappropriate to deal with such an issue within the language of Regulation Z itself. The concerns which have been voiced by oil companies can be better resolved by official staff interpretation of § 226.4(i)(1)(ii) as it applies to gasoline service stations.

The third major concern of commenters was that the amendments appear to distinguish between whether or not credit is being extended to finance a transaction, rather than whether or not a credit card is being used by a customer. To some degree the very use of a credit card is definitionally tied, by the Truth in Lending Act, to the extension of credit. In the amendments, as finalized, the Board has distinguished between payment by use of an open end credit card account, and payment by use of cash, check, or similar means. As indicated by the express language of the amendment, use of an open end credit card account is meant to include verbal orders or purchases by mail, even though the credit card is not physically used. It is not meant to include transactions that involve an extension of credit on an open end account through use of a personal check (overdraft), cash advance check, or similar instrument. The Board believes that its amendment, in all salient provisions, reflects the language and import of the Truth in Lending Act.

## Explanation of Amendment

The amendment makes a variety of changes in and additions to Regulation Z. Definitions of three new terms, "discount," "surcharge," and "regular price," are added to § 226.2.

An explanatory footnote is added to § 226.4(i)(1), minor, clarifying changes are made in §§ 226.4(i)(1)(i), 4(i)(1)(iii), 4(i)(2), and 226.13(1)(1)(i), and a technical modification is made in § 226.5(a)(3)(ii). A new sentence in § 226.4(i)(1)(iii), a substitute paragraph § 226.4(i)(4), and a new paragraph (5) are added to § 226.4(i).

### 1. New definitions

Three newly-defined terms—"regular price," "discount," and "surcharge"—are added to § 226.2. When read in conjunction with those definitions, § 226.4(i) provides that only discounts and not surcharges qualify for the exemption from finance charge disclosure contained in § 167 of the Truth in Lending Act. The definition of "discount" read together with that of "regular price" is intended to clarify that the price differential resulting from a pricing system in which the merchant tags or posts both a credit card price and a cash price is a discount which qualifies for non-disclosure under § 167.

The final definition of "regular price" has been modified in two respects. First, some restructuring has been done for the sake of clarity with no substantive change intended. Second, the phrase "by use of an open end credit card account," along with a limitation on the scope of that phrase, have been substituted for the term "credit card purchases." Frequently people are given an opportunity to purchase some item by mail or telephone order, and have the option of paying by use of their credit card account. Due to the lack of personal contact in the transaction, however, a person's credit card is not physically used to effect payment. Most commonly the person will supply only the number identifying the underlying credit card account. It is the Board's intent to permit non-disclosure of discounts offered for payment by cash, check, or similar means in such situations. The phrase "by use of an open end credit card account," however, would ostensibly include situations where the existence of a credit card is unrelated to the method of payment selected by a customer. For example, under an overdraft checking plan where the amount of an overdraft is debited to an open end credit account, a person paying by check may well also be paying by use of that account. The Board believes that these types of transactions are not equivalent to credit card transactions and, consequently, makes such a distinction within the definition of "regular price."

The definition of "discount," except for an additional cross-reference to the use of that term in § 226.13(1), remains unchanged from the proposed version.

The definition of "surcharge" has been altered in two respects. First, the phrase "use of an open end credit card account" and the limitation on that phrase have been substituted for "credit card purchases" for the same reasons previously discussed. Second, the definition has been rephrased to clarify that a surcharge is an additional amount imposed at the point of sale as a *consequence or condition* of payment by use of an open end

credit card account. This is to insure that a literal reading of the definition would not include such things as sales tax.

Under the definitions of "regular price," "discount," and "surcharge," the following examples of pricing situations would involve "discounts" that would not have to be disclosed if offered in accordance with the requirements of § 226.4(i) :

1. Merchant posts or tags goods with a single price which is charged for credit card purchases and offers a five per cent discount off this price if payment is made by cash, check, or similar means.

2. Merchant posts or tags goods with both a credit card price and a price for payment by cash, check, or similar means which is no more than five per cent lower than the credit card price.

3. Merchant does not tag or post prices, but offers purchasers paying by cash, check, or similar means a price which is no more than five per cent lower than that offered to credit card purchasers.

Any pricing system in which the only price tagged or posted is a cash price which is not available to someone purchasing with a credit card would involve a "surcharge" and would, therefore, be illegal until February 27, 1979.

## 2. Minor clarifying changes

The amendments add a footnote to § 226.4(i) (1) which limits the meaning of the phrase "use of an open end credit card account" in the same manner as discussed in the definition of "regular price" above. The term "regular price" has been substituted for the phrase "tag, posted, or advertised price" in § 226.4(i) (1) (i) to insure uniform application of defined terms. The Board believes that if the regular price already includes sales and other related taxes (e.g., in pricing of gasoline at service stations), then the discount may be calculated on the basis of such "gross" selling price.

The changes in §§ 226.4(i) (2) and 226.13(1) (1) (i) are intended to eliminate the descriptions of a discount as being for cash payment since the statute refers to

discounts for payment by check and other means as well. A similar change was made in § 226.4(i) (1) (iii).

## 3. Addition to § 226.4(i) (1) (iii)

The sentence which is being added to § 226.4(i) (1) (iii) has been modified in two respects. First, the phrase "a discount for cash" now reads "such a discount." This change was made for the same reason discussed in the previous section. Second, the requirement that the regular price be disclosed if an advertisement specifies the discounted price has been dropped. In its place is a requirement that if a merchant advertises only a discounted price, that price must be clearly identified as being unavailable to credit card purchasers. This change prevents consumers from being misled by a low advertised price, and yet permits merchants to be more flexible in their advertising.

## 4. Section 226.4(i) (4)

This language completely replaces former paragraph (4). The original proposal has been shortened because the definition of "surcharge" is sufficiently self-contained. The paragraph repeats the Congressional prohibition on surcharges, together with the date on which that prohibition ends.

## 5. New § 226.4(i) (5)

This new paragraph essentially mirrors the statutory language which states that a discount which qualifies for non-disclosure under § 167 of the Truth in Lending Act shall, in addition, not be considered a charge for credit for purposes of State laws on usury, credit cost disclosure, and permissible credit charges. The only change made from the proposed version of paragraph (5) is the elimination of the words "for cash" since the discount would also be applicable to payment by check or similar means.

## 6. Technical modification

Due to the fact that a footnote was added to § 226.4 (i) (1) and numbered sequentially as "5a," the existing footnote designation in § 226.5(a) (3) (ii) has been changed from "5a" to "5b."

Enclosed is a copy of the amendments. Questions may be directed to our Consumer Affairs Division (Tel. No. 212-791-5919).

PAUL A. VOLCKER,  
*President.*

Board of Governors of the Federal Reserve System

TRUTH IN LENDING

AMENDMENTS TO REGULATION Z

Effective July 20, 1977, Regulation Z is amended as follows:

1. Section 226.2 is amended by adding new paragraphs (tt), (uu) and (vv) as set forth below:

“(tt) ‘Regular price’ means (1) the tag or posted price charged for the property or service if a single price is tagged or posted; or (2) the price charged for the property or service when payment is made by use of an open end credit card account if either (a) no price is tagged or posted, or (b) two prices are tagged or posted, one of which is charged when payment is made by use of an open end credit card account and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of a cardholder’s open end account shall not be considered payment made by use of that account.”

“(uu) ‘Discount,’ as used in §§ 226.4(i) and 226.13(1), means a reduction made from the ‘regular price,’ as defined in § 226.2(tt).”

“(vv) ‘Surcharge,’ as used in § 226.4(i), means any amount added at the point of sale to the ‘regular price,’ as defined in § 226.2(tt), as a condition or consequence of payment being made by use of an open end credit card account. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of a cardholder’s open end account shall not be considered payment made by use of that account.”

2. Section 226.4(i) is amended as follows:

(a) paragraph (1) is amended by adding footnote “5a” after the phrase “whether or not a credit card is physically used,” the text of which footnote shall be as follows:

“For purposes of this section, payment by check, draft, or other negotiable instrument which may result in the debiting of a cardholder’s open end account shall not be considered payment made by use of that account.”

(b) paragraph (1)(i) is amended by deleting the words “tag, posted, or advertised” and substituting therefor the word “regular.”

(c) paragraph (1)(iii) is amended by:

(1) changing the phrase “the availability of a discount for payments in cash must be clearly and conspicuously disclosed” to read as follows:

“the availability of such a discount must be clearly and conspicuously disclosed”; and

(2) by adding at the end of the paragraph a new sentence as follows:

“If a price other than the regular price, as defined in § 226.2(tt), is disclosed in an advertisement, telephone contact, or other correspondence promoting goods or services for which such a discount is offered, then the advertisement, telephone contact, or other correspondence shall also indicate that such price is not available to credit card purchasers.”

(d) paragraph (2) is amended by deleting the words “for cash.”

(e) paragraph (4) is deleted and new paragraph (4) as follows is added in lieu thereof:

“(4) No creditor in any sales transaction may impose a surcharge. This paragraph shall cease to be effective on February 27, 1979.”

(f) new paragraph (5) is added as follows:

“(5) Notwithstanding any other provisions of this Part, any discount which, pursuant to paragraph (1), is not a finance charge for purposes of this Part shall not be considered a finance charge or other charge for credit under the laws of any State relating to:

(i) usury; or

(ii) disclosure of information in connection with credit extensions; or

(iii) the types, amounts, or rates of charges, or the element or elements of charges permissible in connection with the extension or use of credit.”

3. Section 226.5(a)(3)(ii) is amended by deleting the footnote designation “5a” and inserting, in lieu thereof, the designation “5b.”

4. Section 226.13(1)(1)(i) is amended by deleting the word “cash” which appears immediately before the word “discounts.”

For this Regulation to be complete, retain:

- 1) Regulation Z pamphlet, amended to March 23, 1977.
- 2) Amendments effective April 11, 1977.
- 3) This slip sheet.