

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 8871]
July 11, 1980]

RESTITUTION UNDER THE TRUTH IN LENDING ACT
Policy Guide For Restitution

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

Enclosed is a copy of a "Policy Guide for Restitution under the Truth in Lending Act," adopted by the Board of Governors of the Federal Reserve System, that explains the conditions under which reimbursement by State member banks to borrowers must be made when the annual percentage rate or finance charge required to be disclosed under the Truth in Lending Act has been understated. The following is quoted from the text of a statement issued by the Board of Governors, announcing the adoption of the Policy Guide:

The Policy Guide was developed by the Board, and other agencies represented on the Federal Financial Institutions Examination Council, to embody the requirements of a section of the Truth in Lending Simplification Act.¹

In general, restitution is required under the Simplification Act when the understatement of the cost of borrowing is part of a clear and consistent pattern or practice of violations, or results from gross negligence or from willful violation intended to mislead the person to whom the credit was extended.

The restitution requirements of the Act apply to all types of credit subject to Truth in Lending disclosures. However, there are certain special rules applying to mortgage transactions involving irregular payments.

The Simplification Act provides that existing open-end and closed-end transactions in which the APR or finance charge was understated will be subject to adjustment according to different time frames, going back in some cases as far as July 1, 1969 (see Corrective Action in the [enclosed] Policy Guide).

Where the amount of an adjustment would be less than \$1, no restitution to the consumer would be required, but in such cases outstanding for more than a year after the violation, payments to the U.S. Treasury may be ordered.

A uniform interagency plan will be developed within the Examination Council for implementing the restitution provisions. Institutions identified as having reimbursable violations under Regulation Z Enforcement Guidelines that were developed by the agencies last year will be examined by the agencies within a year, to determine if restitution is necessary under the new policy.

¹ Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980

Additional copies of the Policy Guide will be furnished upon request. Questions regarding the Board's restitution policy may be directed to our Consumer Affairs and Bank Regulations Department (Tel. No. 212-791-5914).

ANTHONY M. SOLOMON,
President.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

POLICY GUIDE FOR RESTITUTION UNDER THE TRUTH IN LENDING ACT

ADMINISTRATIVE ENFORCEMENT OF THE TRUTH IN LENDING ACT - RESTITUTION

The Depository Institutions Deregulation and Monetary Control Act of 1980 (P. L. 96-221), was enacted on March 31, 1980. Title VI of that Act, the Truth in Lending Simplification and Reform Act, amends the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq. Section 608 of Title VI, effective March 31, 1980, authorizes the Federal Truth in Lending enforcement agencies to order creditors to make monetary and other adjustments to the accounts of consumers in cases where an annual percentage rate or finance charge was inaccurately disclosed. It generally requires the agencies to order restitution when such disclosure errors resulted from a clear and consistent pattern or practice of violations, gross negligence, or a willful violation which was intended to mislead the person to whom the credit was extended. However, the Act does not preclude the agencies from ordering restitution for isolated disclosure errors.

This policy guide summarizes and explains the restitution provisions of the Truth in Lending Act, as amended. The material also explains corrective actions the financial regulatory agencies believe will be appropriate and generally intend to take in those situations in which the Act gives the agencies the authority to take equitable remedial action.

The agencies anticipate that most financial institutions will voluntarily comply with the restitution provisions of § 608 as part of the normal regulatory process. If a creditor does not voluntarily act to correct violations, the agencies will use their cease and desist authority to require correction pursuant to: 15 U.S.C. § 1607 and 12 U.S.C. § 1818(b) in the cases of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency; 15 U.S.C. § 1607 and 12 U.S.C. §§ 1464(d)(2) and 1730(e) in the case of the Federal Home Loan Bank Board; and, 15 U.S.C. § 1607 and 12 U.S.C. § 1786(e)(1) in the case of the National Credit Union Administration.

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RESTITUTION PROVISIONS

Definitions

Except as provided below, all definitions are those found in the Truth in Lending Act ("Act") and Regulation Z, 12 CFR Part 226.

1. "Current Examination" means the most recent examination begun on or after March 31, 1980, in which compliance with Regulation Z was reviewed.
2. "Irregular Mortgage Transaction" means a loan secured by real estate for which the annual percentage rate (APR) cannot be calculated using Volume 1 of the Federal Reserve System's Truth in Lending, Regulation Z, Annual Percentage Rate Tables.
3. "Lump Sum Method" means a method of reimbursement in which a cash payment equal to the total adjustment will be made to a consumer.
4. "Lump Sum/Payment Reduction Method" means a method of reimbursement in which the total adjustment to a consumer will be made in two stages:
 - a) a cash payment that fully adjusts the consumer's account up to the time of the cash payment; and,
 - b) a reduction of the remaining payment amounts on the loan.
5. "Understated APR" means:
 - a. For other than irregular mortgage transactions, a disclosed APR which, when increased by one-quarter of one percentage point, is less than the actual APR calculated under the Act, without taking into account the tolerance provided by section 107(c) of that Act.
 - b. For irregular mortgage transactions consummated before April 1, 1981, a disclosed APR which is less than the actual APR calculated under section 107(c) of the Act, including a one-half of one percentage point tolerance.
 - c. For irregular mortgage transactions consummated after March 31, 1981, but before April 1, 1982, a disclosed APR which, when increased by one-quarter of one percentage point (instead of one-half of one percentage point), is less than the actual APR calculated under the Act, without taking into account the tolerance provided by section 107(c) of that Act.
 - d. For all loans consummated after March 31, 1982 (including irregular mortgage transactions), which have an amortization schedule of 10 years or less, a disclosed APR which, when increased by one-quarter of one percentage point, is less than the actual APR calculated under the Act, without taking into account the tolerance provided by section 107(c) of the Act.

- e. For all loans consummated after March 31, 1982 (including irregular mortgage transactions), which have an amortization schedule of more than 10 years, a disclosed APR which is less than the actual APR, including the tolerance contained in section 107(c).
 - f. For all loans determined to contain a willful violation intended to mislead a consumer, a disclosed APR which is less than the actual APR including the tolerance contained in section 107(c).
6. "Understated Finance Charge" means a disclosed finance charge which, when increased by a numerical tolerance that is generated by the corresponding APR tolerance, ^{1/} is less than the finance charge calculated under the Act.

De Minimis Rule

If the amount of adjustment on an account is less than \$1.00, no restitution will be ordered. However, the agencies may require a creditor to make any adjustments of less than \$1.00 by paying into the United States Treasury, if more than one year has elapsed since the date of the violation.

Corrective Action Period

- 1. Open-end credit transactions will be subject to an adjustment if the violation occurred within the two-year period preceding the date of the current examination.
- 2. Closed-end credit transactions will be subject to an adjustment if the violation resulted from a clear and consistent pattern or practice or gross negligence where:
 - a. There is an understated APR on a loan which originated between January 1, 1977 and March 31, 1980.
 - b. There is an understated APR or understated finance charge, and the practice giving rise to the violation is identified during a current examination. Loans containing the violation which were consummated since the date of the immediately preceding examination are subject to an adjustment.

^{1/} Finance charge tolerance: the finance charge tolerance for each loan will be generated by the corresponding APR tolerance applicable to that loan. For example, consider a single-payment loan with a one-year maturity which is subject to a one-quarter of one percent APR tolerance. If the amount financed is \$5,000 and the finance charge is \$912.50, the APR will be 18.25%. The finance charge generated by the APR of 18% on that loan would be \$900. The difference between \$912.50 and \$900 produces a numerical finance charge tolerance of \$12.50. If the disclosed finance charge is not understated by more than \$12.50, reimbursement would not be ordered.

- c. There is an understated APR or understated finance charge, the practice giving rise to the violation was identified during the prior examination, and the practice is not corrected by the date of the current examination. Loans containing the violation which were consummated since the creditor was first notified in writing of the violation are subject to an adjustment. [Prior examinations include any examinations conducted since July 1, 1969.]
3. Each closed-end credit transaction containing a willful violation intended to mislead the consumer consummated since July 1, 1969 is subject to an adjustment.
4. For terminated loans subject to 2 above, an adjustment will not be ordered if the violation occurred in a transaction consummated more than two years prior to the date of the current examination.

Calculating the Adjustment

Consumers will not be required to pay any amount in excess of the finance charge or dollar equivalent of the APR actually disclosed on transactions involving:

1. Understated APR violations on transactions consummated between January 1, 1977 and March 31, 1980, or
2. Willful violations which were intended to mislead the consumer.

On all other transactions, applicable tolerances provided in the definitions of understated APR and understated finance charge may be applied in calculating the amount of adjustment to the consumer's account.

Methods of Adjustment

The consumer's account will be adjusted using the lump sum method or the lump sum/payment reduction method, at the discretion of the creditor.

Violation Involving the Non-Disclosure of the APR or Finance Charge

1. In cases where an APR was required to be disclosed but was not, the disclosed APR shall be considered to be the contract rate, if disclosed on the note or the Truth in Lending disclosure statement.
2. In cases where an APR was required to be disclosed but was not, and no contract rate was disclosed, consumers will not be required to pay an amount greater than the actual APR reduced by one-quarter of one percentage point, in the case of first lien mortgage transactions, and by one percentage point in all other transactions.
3. In cases where a finance charge was not disclosed, no adjustment will be ordered.

Violations Involving the Improper Disclosure of Credit Life, Accident, Health, or Loss of Income Insurance

1. Through March 31, 1982:

- a. If the creditor has not disclosed to the consumer in writing that credit life, accident, health, or loss of income insurance is optional, the insurance shall be treated as having been required and improperly excluded from the finance charge. An adjustment will be ordered if it results in an understated APR or understated finance charge. The insurance will remain in effect for the remainder of its term.
- b. If the creditor has disclosed to the consumer in writing that credit life, accident, health, or loss of income insurance is optional, but there is either no signed insurance option or no disclosure of the cost of the insurance, the creditor shall, unless a claim was made on the insurance policy and paid, be required to send a written notice to the affected consumer disclosing the cost of the insurance and notifying the consumer that the insurance is optional and may be cancelled within 45 days to obtain a full refund of all premiums charged. If the creditor receives no response from the consumer within 45 days, the insurance will remain in effect and no further corrective action, with respect to that loan, will be required.

2. After March 31, 1982, the above violations of section 106(b) of the Act will be treated as APR or finance charge violations for adjustment purposes, as applicable.

Special Disclosures

Adjustments will not be required for violations involving the disclosures required by sections 106(c) and (d) of the Act.

Obvious Errors

If an APR was disclosed correctly, but the finance charge required to be disclosed was understated, or if the finance charge was disclosed correctly but the APR required to be disclosed was understated, no adjustment will be required if the error involved a disclosed value which was 10 percent or less of the amount that should have been disclosed.

Agency Discretion

Adjustments will not be required if the agency determines that the disclosure error resulted from any unique circumstance involving a clearly technical and non-substantive disclosure violation which did not adversely affect information provided to the consumer and which did not mislead or otherwise deceive the consumer.

Safety and Soundness

In connection with loans consummated before April 1, 1980, if full adjustments would have a significantly adverse impact upon the safety and soundness of the creditor, partial adjustments which do not have such an impact may be required. In connection with loans consummated after March 31, 1980, full adjustments will always be required. However, the affected creditor will be permitted to make the full adjustment in partial payments over an extended period in order to minimize the adverse impact on its safety and soundness.

Exemption from Restitution Orders

A creditor will not be subject to an order to make an adjustment if within 60 days after discovering a disclosure error, whether pursuant to a final written examination report or through the creditor's own procedures, the creditor notifies the person concerned of the error and adjusts the account to ensure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the APR disclosed, whichever is lower. This 60-day period for correction of disclosure errors is unrelated to the provisions of § 130, Civil Liability, of the Truth in Lending Act.