

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. **9250** ]  
February 18, 1982 ]

**AMENDMENT TO REGULATION Z**

**Definition of Arranger of Credit**

*To All Depository Institutions, and Others Concerned,  
in the Second Federal Reserve District:*

The Board of Governors of the Federal Reserve System has amended its Regulation Z, "Truth in Lending," by excluding from the definition of "arranger of credit" anyone who arranges for seller financing of a dwelling. The following is quoted from the text of the Board's announcement:

The definition includes those who regularly arrange for consumer loans by another person who is not a creditor. The amendment specified that this excludes those (such as real estate brokers) who arrange for the financing of the sale of a residence or real property by the seller.

The Board's action was taken after consideration of some 3,000 letters of comment on a proposal that would have included certain real estate brokers as arrangers of credit in seller-financed home sales.

The Board said that the matter should ideally be resolved by action of the Congress, and that it was excluding real estate brokers at this time to give Congress time to act. Depending upon Congress' action, the Board will review the question early in 1983.

Enclosed is a copy of the amendment, effective February 19, 1982. Questions thereon may be directed to our Consumer Affairs and Bank Regulations Department (Tel. No. 212-791-5914).

ANTHONY M. SOLOMON,  
*President.*

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0368]

TRUTH IN LENDING

Definition of Arranger of Credit

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Truth in Lending Act and the Board's implementing Regulation Z in certain circumstances cover those who arrange credit. On October 23, 1981, the Board published for comment a proposed amendment to revised Regulation Z to define "arranger of credit" more specifically. It requested comment on what activities should constitute arranging credit and asked whether real estate brokers who arrange for seller financing of homes should be considered arrangers of credit. In light of the comments received, and the possibility of Congress' addressing the question of whether arrangers of credit should have the responsibility for providing Truth in Lending disclosures, the Board has decided not to adopt the amendment as proposed at this time. The Board believes the ultimate resolution of this matter should be made by the Congress and it does not wish to require the industry to prepare to comply with a regulation when the Congress may later exempt brokers who arrange seller financing from the act's coverage. Therefore, the Board is now amending the definition of "arranger of credit" to state that it does not include anyone who arranges for seller financing of a dwelling. However, depending on the Congress' action, the Board will review the matter in early 1983.

EFFECTIVE DATE: February 19, 1982.

FOR FURTHER INFORMATION CONTACT: Susan Werthan or Steven Zeisel, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202)452-3867.

SUPPLEMENTARY INFORMATION: (1) Introduction. Effective April 1, 1981, the Federal Reserve Board substantially revised Regulation Z (46 FR 20848, April 7, 1981) to reflect the amendments to the Truth in Lending Act made by the Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 170, March 31, 1980). The revised regulation does not become mandatory until October 1, 1982. One of the amendments required that Truth in Lending disclosures be given by those who regularly "arrange" for credit to be extended by persons who do not meet the "creditor" definition. However, the amendment did not specify what activities constitute "arranging credit," and the formal legislative history does not describe what groups were intended to be covered. On October 23, 1981, the Board published for comment a proposed amendment to the revised Regulation Z to define "arranger of credit" more specifically (46 FR 51920).

The proposal covered those who regularly (1) develop or negotiate the credit terms, and (2) assist in completing the documents containing the binding credit terms. Under the proposal, most real estate brokers who arrange for home sellers to provide part or all of the financing to the home purchaser would be covered because, in doing so, they would meet these two tests. The Board requested comment on what activities should constitute "arranging credit" and asked whether real estate brokers or salespersons who arrange seller financing should be considered arrangers.

The Board received approximately 3,000 written comments, the vast majority of which opposed requiring real estate brokers to give Truth in Lending disclosures for seller-financed transactions. About 60% of the comments consisted of form letters opposing the proposal. Commenters on both sides of the question, however, presented strong arguments. Commenters in favor of covering brokers that arrange seller financing, for example, argued that disclosures are necessary because certain terms, such as a large balloon payment due after a few years, may not be adequately described absent Truth in Lending disclosures. They argued that the need for disclosures is particularly important because of the large amount of money involved. These commenters also suggested that the responsibilities of compliance would be no greater than those imposed on all others subject to the act's requirements.

Commenters opposing the proposal stressed that the real estate industry is experiencing many serious problems at this time and would be greatly burdened by additional disclosure responsibility and liability. They also argued that Truth in Lending disclosures would be of little use to consumers in these cases for two reasons: (1) much of the disclosure information is provided in other documents and the credit terms, though "creative," are generally quite simple; and (2) little comparison shopping can be done since seller financing is generally used only when conventional financing is unavailable. Commenters also pointed out the numerous operational problems that coverage would present, including, for example: how to define which entity is the arranger (sales agent, licensed broker, or brokerage firm; selling broker or listing broker); how to provide disclosures for the numerous offers and counter-offers the parties may exchange before an agreement is finally reached; and how to keep a broker's failure to comply from complicating any later litigation between the seller and the buyer.

The question of whether arrangers of credit should have Truth in Lending disclosure responsibilities was under active consideration by Congress during the last session. Although the bill was not passed, it is anticipated that the Congress may consider it again this session. Several dozen congressional letters and phone calls received by the Board indicate that interest continues in this issue.

Resolving the question of whether real estate brokers who arrange seller financing should be required to provide Truth in Lending disclosures calls for a difficult balancing of the benefits to consumers against the burdens to brokers. The Board believes that this is such a substantive decision that ideally it should be made by the Congress. Since the matter has already been taken up by the Congress, and since it may be dealt with in this congressional session, the Board believes it would be inappropriate at this time to extend coverage of the regulation to real estate brokers. Moreover, if the regulation were amended now to cover brokers, and they were later exempted by the Congress,

the expense that the industry would incur in preparing to comply by October 1, 1982, would have been wasted. However, depending on the Congress' action, the Board will review the question of coverage in early 1983. Therefore, the Board is interested in learning whether the incidence of seller financing remains high and whether problems of consumer misinformation are developing.

The Board therefore is not adopting the amendment as proposed, but instead is defining "arranger of credit" to exclude certain real estate brokers on an interim basis in order to allow the Congress to decide the question. It is adopting an amendment to the definition of "arranger of credit" in revised Regulation Z to clarify that the term does not include a real estate broker or salesperson who arranges for the seller of a home to finance, in whole or in part, the purchase of the home. The term continues to include anyone (including a real estate broker) who regularly arranges for a third party (that is, someone other than the seller) to provide credit if the third party is not itself a creditor.

(2) Authority. Pursuant to Section 105 of the Truth in Lending Act (15 U.S.C. 1604, as amended), the Board amends § 226.2(a)(3) of revised Regulation Z (46 FR 20848), by adding a sentence at the end, so that it will read as follows:

SECTION 226.2 -- Definitions and Rules of Construction

(a) Definitions. \*\*\*

(3) "Arranger of credit" means a person who regularly arranges for the extension of consumer credit<sup>2/</sup> by another person if:

- (i) A finance charge may be imposed for that credit, or the credit is payable by written agreement in more than four installments (not including a downpayment); and
- (ii) The person extending the credit is not a creditor.

The term does not include a person (such as a real estate broker) when arranging seller financing of a dwelling or real property.

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<sup>2/</sup> A person regularly arranges for the extension of consumer credit only if it arranged credit more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

By order of the Board of Governors of the Federal Reserve System,  
February 12, 1982.

(signed) William W. Wiles  
William W. Wiles  
Secretary of the Board

[SEAL]

1982, would have been stated. However, according to the Board, the Board will review the question of coverage in early 1983. Therefore, the Board is interested in learning whether the inclusion of seller financing remains high and whether problems of consumer information are developing.

...proposed, but instead to include certain real estate brokers on an interim basis. The Board will review the question of "seller of credit" in revised Regulation Z to clarify that the term does not include a real estate broker or salesperson who arranges for the seller of a home to finance, in whole or in part, the purchase of the home. The term continues to include anyone (including a real estate broker) who regularly arranges for a third party to provide credit to the third party (other than the seller) to provide credit to the third party (other than the seller).

(3) Authority. Pursuant to section 106 of the Truth in Lending Act (15 U.S.C. 1606), as amended, the Board amends § 226.2(a)(3) of revised Regulation Z (45 FR 10048), by adding a sentence at the end, so that it will read as follows:

SECTION 226.2 - Definitions and Rules of Construction

(a) Definitions. \*\*\*

(3) "Arranger of credit" means a person who regularly arranges for the extension of consumer credit by another person if:

(i) A finance charge may be imposed for that credit, or the credit is payable by written agreement in more than four installments (not including a downpayment); and

(ii) The person extending the credit is not a creditor.

The term does not include a person (such as a real estate broker) who arranges for the financing of a dwelling or real property.

A person regularly arranges for the extension of consumer credit only if it arranged credit more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.