

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 9482]
April 15, 1983]

TRUTH IN LENDING
— Amendments to Regulation Z and Commentary
— Technical Amendments to Regulation E and Commentary

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

The Board of Governors of the Federal Reserve System has announced the adoption of several amendments to its Regulation E, "Electronic Fund Transfers," and its Regulation Z, "Truth in Lending," and the Official Staff Commentaries on those regulations. The amendments to Regulation E, effective April 1, 1983, are being made in order to conform that regulation, and its commentary, with the recent revision and simplification of Regulation Z.

The amendments to Regulation Z, which are retroactively effective October 1, 1982, implement certain Truth in Lending provisions of the Garn-St Germain Depository Institutions Act of 1982. The changes in the Official Staff Commentary on Regulation Z are effective April 1, 1983.

The following is quoted from the text of the statement issued by the Board of Governors announcing these changes:

The Federal Reserve Board has adopted several amendments to its Regulation Z — Truth in Lending — affecting arrangers of credit, student loans and the use of calculation devices in determining annual percentage rates.

* * *

Two of the amendments implement provisions of the Garn-St Germain Depository Institutions Act of 1982. The first implements the Act's deletion of "arrangers of credit" from the definition of creditor. The second implements the provision of the Act exempting student loans made under Title IV of the Higher Education Act of 1965 from the requirements of Truth in Lending.

The Board also reinstated two provisions of the regulation dealing with errors in calculation of the annual percentage rate resulting from the use of faulty calculation tools.

In addition, the Board is renumbering certain provisions of Regulation E — Electronic Fund Transfers — which cross reference provisions of Regulation Z, to bring them into line with the recent revision and simplification of Regulation Z.

Enclosed is the text of the amendments to Regulations E and Z, including the changes in the Official Staff Commentaries on those regulations. Additional copies will be furnished upon request directed to the Circulars Division of this Bank (Tel. No. 212-791-5216). Questions regarding these regulations may be directed to our Regulations Division (Tel. No. 212-791-5914).

ANTHONY M. SOLOMON,
President.

Board of Governors of the Federal Reserve System

TRUTH IN LENDING

AMENDMENTS TO REGULATION Z

(effective October 1, 1982)

UPDATE TO OFFICIAL STAFF COMMENTARY ON REGULATION Z

(effective April 1, 1983)

12 CFR Part 226

[Reg. Z; Doc. No. R-0450]

Truth in Lending; Definition of Arranger of Credit; Exemption of Certain Student Loans; Treatment of Certain Disclosure Errors; and Official Staff Commentary Update

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and final official staff interpretation.

SUMMARY: The Board is publishing final amendments to revised Regulation Z to implement Truth in Lending amendments made in the Garn-St Germain Depository Institutions Act of 1982. The amendments to 12 CFR part 226 delete from coverage arrangers of credit and exempt certain student loans. For purposes of administrative enforcement, two footnotes relating to disclosure errors caused by the use of faulty calculation tools are also amended. This notice also contains changes to the official staff commentary, which applies and interprets the requirements of the revised Regulation Z as a substitute for individual staff interpretations of the regulation. Some of the changes reflect the statutory amendments while others update the current commentary.

EFFECTIVE DATES:

Regulatory amendments—October 1, 1982.

Commentary changes—April 1, 1983, but reliance optional until October 1, 1983.

FOR FURTHER INFORMATION CONTACT:

The following attorneys in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C.

20551, at (202) 452-3667 or (202) 452-3867:

Regulatory amendments—Claudia Yarus
Commentary:

Subpart A—Gerald Hurst

Subpart B—Ruth Amberg, Jesse Filkins, Richard Garabedian, Lynn Goldfaden, Gerald Hurst, John Wood

Subpart C and Appendices—Clarence Cain, Lucy Griffin, Rugenia Silver, Susan Werthan, Claudia Yarus, Steven Zeisel

Subpart D—Rugenia Silver.

SUPPLEMENTARY INFORMATION:

1. *Introduction.* This notice contains three types of changes to the Board's Regulation Z, and changes to the accompanying official staff commentary. These changes were proposed for comment on February 2, 1983 (48 FR 4669). The Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320, October 15, 1982 as amended by Pub. L. 97-457, Jan. 13, 1983) (DIA) made two amendments to the Truth in Lending Simplification and Reform Act of 1980. Section 103(f) of the Truth in Lending Act was amended by deleting "arrangers of credit" from the definition of "creditor," effective October 1, 1982. Section 104 was amended by exempting from coverage (both prospectively and retroactively) loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.). To implement these statutory amendments, the Board is amending § 226.2 of Regulation Z by removing the definition of "arranger of credit" and removing "arrangers of credit" from the "creditor" definition, and amending § 226.3 by adding a new paragraph that exempts loan programs under Title IV of the Higher Education Act of 1965. These amendments are retroactively effective October 1, 1982.

The vast majority of those who commented on the deletion from coverage of arrangers of credit supported the change. A few preferred that the exemption be narrowed to exclude only real estate brokers, but the majority agreed that the regulatory change properly reflected the statutory action.

Only a small number of commenters addressed the exemption for certain student loans. Almost all of the commenters supported the exemption, although a couple of commenters asked that the exemption be broadened to include all student loans.

Amendments to footnote 31a (§ 226.14(a)) and footnote 45a (§ 226.22(a)) are also being made, effective October 1, 1982. These footnotes protect creditors from liability for use of faulty calculation tools. The footnotes provide that an error in the disclosure of the annual percentage rate or finance charge is not considered a violation if: (1) The error results from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor discontinues use of the tool and notifies the Board in writing of the error in the calculation tool. Thus, errors that meet these criteria are not violations and creditors found to have such errors are protected from both civil and administrative actions, particularly restitution.

The Board had eliminated the protection provided by the footnotes as of October 1, 1982, the effective date of the amended act, in the belief that the act's expansion of the bona fide error defense to civil liability made the footnotes unnecessary.

Upon further review, however, the Board believes that the elimination of the protection provided by the footnotes had the effect, without the intent, of exposing creditors to restitution. The

PRINTED IN NEW YORK, FROM FEDERAL REGISTER, VOL. 48, NO. 67

For this Regulation to be complete, retain:

- 1) Regulation Z pamphlet, amended effective April 1, 1981.
- 2) Official Staff Commentary on Regulation Z, dated December 1981 (furnished only upon request).
- 3) Various amendments and corrections included in slip sheet, dated April 1982.
- 4) This slip sheet

amended act protects creditors from civil liability for violations resulting from bona fide errors, even in the absence of the footnotes. However, without the protection of the footnotes creditors could be subject to administrative enforcement, including restitution, for the same errors. The Board therefore proposed to reinstate the protection of the footnotes.

Over 90% of the commenters that addressed the proposal to amend the footnotes supported its adoption without any changes. Very few commenters opposed the amendment.

The creditor's reliance on the tool must be in good faith in order to take advantage of the protection offered by the footnotes. In the Board's view, this imposes on the creditor a reasonable degree of responsibility for assuring that the tool in question provides the degree of accuracy required by the regulation. For example, the creditor might verify the results obtained by use of the tool by comparing those results to the figures obtained by use of another calculation tool. The creditor might also reasonably rely on the expertise of the enforcement agency in making such a determination prior to use of the tool.

Finally, changes to the Regulation Z official staff commentary (Supplement I to Part 226) are being made. Some of the changes correspond to the regulatory amendments implementing the DIA and serve to conform the regulation and commentary. Other commentary changes update the document. This is a periodic update to the commentary, as amended effective September 17, 1982 (47 FR 41388, September 20, 1982) and responds to significant questions that have arisen since the last update. The types of changes being made generally give creditors more flexibility in making disclosures, while preserving basic consumer protections.

For purposes of continuing the commentary as the sole interpretive vehicle of Regulation Z, the staff plans to update the commentary annually. There may, of course, be occasions when updates occur more frequently. It is expected that revisions will be proposed in November for at least a 60-day comment period. Final changes will then be issued after the first of the year, with optional compliance until the uniform effective date of October 1 for mandatory compliance.

2. *Regulatory revisions.* Following is a brief description of the regulatory revisions:

Subpart A—General

Section 226.2 *Definitions and rules of construction.*

(a)(3) "Arranger of credit"

This definition and footnote 2 are

removed to implement the Truth in Lending Act amendment to the definition of "creditor" made in the DIA. The paragraph and footnote numbers are reserved for future use in order to avoid the need for renumbering all subsequent definitions and footnotes.

(a)(17) "Creditor"

This definition is amended by removing paragraph (a)(17)(ii). The amendment conforms the regulatory definition to the statutory definition as amended by the DIA. Paragraphs (a)(17)(iii), (iv), and (v) of the current definition are redesignated as paragraphs (a)(17)(ii), (iii), and (iv), respectively.

Section 226.3 *Exempt transactions.*

Paragraph (f) is added to exempt loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965. The DIA Truth in Lending amendments expressly exempt these loans from coverage.

Sections 226.14 and 226.22 *Determination of annual percentage rate.*

The last sentence of both footnote 31a and footnote 45a is removed. This amendment reinstates the protections provided by the two footnotes.

3. *Commentary revisions.* Following is a brief description of the revisions to the commentary:

Subpart A—General

Section 226.2 *Definitions and rules of construction.*

2(a)(3) "Arranger of Credit"

Comments 2(a)(3)-1 through 6 are removed to correspond to the regulatory amendments that remove "arrangers of credit" from the "creditor" definition.

2(a)(4) "Billing Cycle" or "Cycle"

Comment 2(a)(4)-1 is revised to eliminate possible confusion over whether the periodic statement must in fact be sent within the 4-day interval.

2(a)(17) "Creditor"

The work "five" in the first sentence of comment of 2(a)(17)-1 is changed to the word "four".

Comment 2(a)(17)(ii)-1 is removed to conform the commentary to the regulatory amendments that implement the DIA Truth in Lending amendments.

The comment designations—*Paragraph 2(a)(17)(iv) and Paragraph 2(a)(17)(v)*—are redesignated *Paragraph 2(a)(17)(iii) and Paragraph 2(a)(17)(iv)*, respectively.

2(a)(18) "Downpayment"

Comment 2(a)(18)-1 is revised to include a cross-reference to the

commentary to § 226.2(a)(23). Material added to the commentary to § 226.2(a)(23) discusses the allocation of lump-sum payments between the downpayment and the prepaid finance charge.

2(a)(23) "Prepaid Finance Charge"

A new comment 2(a)(23)-4 is added to clarify the treatment to be given discounts and other items that are finance charges under § 226.4 in credit sale transactions involving lump-sum payments by a consumer. This comment discusses the allocation of a lump-sum payment between the downpayment and the prepaid finance charge.

2(a)(24) "Residential Mortgage Transaction"

A new comment 2(a)(24)-5 is added to clarify whether certain transactions are "to finance the acquisition" of the consumer's principal dwelling and are therefore residential mortgage transactions. The comment also discusses some of the effects this determination has on whether disclosures are required and which ones must be given.

References

A sentence is added to the paragraph under *1981 Changes* discussing "arranger of credit" indicating that the definition has been removed from the statute. This reflects the DIA Truth in Lending amendment.

Section 226.3 *Exempt transactions.*

3(f) *Student Loan Programs*

Comment 3(f)-1 is added to clarify which loan programs are administered under Title IV of the Higher Education Act of 1965. This comment corresponds to the regulatory amendment implementing the DIA Truth in Lending amendments that exempt these loan programs from the regulation.

Section 226.4 *Finance charge.*

4(d) *Insurance*

Comment 4(d)-10 is revised to provide an exception to the requirement that creditors allocate a portion of the premium for coverages that are not VSI or other property insurance when the total amount of the premium in fact attributable to all of the non-VSI coverages included in the VSI policy is \$1.00 or less (or in the case of multi-year policies, \$5.00 or less).

Subpart B—Open-End Credit

Section 226.5 *General disclosure requirements.*

5(a) *Form of Disclosures*

Comment 5(a)(2)-3 is added to clarify that the terms "finance charge" and "annual percentage rate" need not be more conspicuous than numerical

amounts or percentages. The material has been revised from the proposal, but is unchanged in substance.

5(b) Time of Disclosures

Comment 5(b)(1)-3 is expanded to clarify that no new initial disclosures need be given when the consumer's account is closed simply to provide the consumer with a new account number, such as when a credit card is reported lost or stolen and a new account number is assigned for security reasons.

Section 226.8 Identification of transactions.

Comment 8-7 is added to give the creditor the option of two means of identifying credit insurance premiums on the periodic statement when the insurance is offered through the creditor but actually provided by another company. In such a case, the creditor could identify the premium using either the rule in § 226.8(a)(2) for "related" sellers and creditors, or the rule in § 226.8(a)(3) for "non-related" sellers and creditors.

Section 226.9 Subsequent disclosure requirements.

9(c) Change in Terms

The first sentence of comment 9(c)(1)-3 is revised to clarify when the change-in-terms notice must be provided to the consumer in those cases in which the 15-day advance-notice requirement is inapplicable.

Comment 9(c)(1)-3 is revised to clarify the scope of the exception to the 15-day change-in-terms requirement. The revision includes an example of an occurrence that would not be considered an "agreement" for purposes of relieving the creditor of its responsibility to provide an *advance* change-in-terms notice. If the change is the type that has been unilaterally made by the creditor and is of general applicability, advance notice must be given. Thus, the "agreed to" rule would not apply in the following example: A creditor has decided to change a term in its open-end plan. Instead of providing change-in-terms notices to its customers 15 days in advance of the term change, the creditor decides to wait until each consumer comes to the creditor's office to request a cash advance. At that time, the consumer is given a change-in-terms notice, and, if the consumer agrees to the term change, the advance is made.

The first sentence of comment 9(c)(2)-2 is revised to add the words "or payments," which is merely an editorial change.

Comment 9(c)(2)-2 is revised to give additional guidance on how the change-

in-terms requirement may be satisfied when skip features are involved.

Section 226.15 Right of rescission.

15(a) Consumer's Right to Rescind

Comment 15(a)(3)-4 is revised to clarify that the sale of the consumer's interest in the property terminates the right to rescind, even though the consumer is financing the transaction. The comment has been expanded from the proposal for illustrative purposes.

Subpart C—Closed-End Credit

Section 226.17 General disclosure requirements.

17(a) Form of Disclosures

Comment 17(a)(1)-5 is expanded to add one example of "directly related" information. This example, relating to § 226.18(q), responds to inquiries about an appropriate assumption policy disclosure when a transaction involves a due-on-sale clause. The example makes clear that the creditor may refer to the due-on-sale clause in making the disclosure under § 226.18(q).

Comment 17(a)(2)-1 is expanded to clarify that the terms "finance charge" and "annual percentage rate" need not be more conspicuous than numerical amounts or percentages. The material has been renumbered and revised from proposed comment 17(a)(2)-3, but is unchanged in substance from the proposal.

17(i) Interim Student Credit Extensions

Comment 17(i)-1 is revised to remove references to the Guaranteed Student Loan Program and the PLUS program. These loan programs are administered under Title IV of the Higher Education Act of 1965 and are thus no longer subject to Regulation Z, pursuant to the statutory amendments exempting these loan programs. A cross-reference to § 226.3(f), which reflects that exemption, has been added to comment 17(i)-1.

Comment 17(i)-4 is deleted. This comment addressed loan programs that are now exempt under the DIA Truth in Lending amendments. Comment 17(i)-5 is redesignated comment 17(i)-4.

Section 226.18 Content of disclosures.

18(f) Variable Rate

Comment 18(f)-1 is revised to make clear that the variable-rate disclosure applies not only to an increase in the interest component of the annual percentage rate but also to increases in other elements that affect the rate, such as the rate of required credit life insurance. The comment has been expanded from the proposal for greater clarity.

Comment 18(f)-5 is revised to explain the circumstances under which footnote

43 is available to creditors authorized by recent federal legislation to make alternative mortgage loans. Footnote 43 permits creditors to omit the § 226.18(f) disclosures if variable-rate disclosures are made in accordance with certain variable-rate regulations of other federal agencies. Title VIII of the DIA allows non-federally-chartered housing creditors to offer creative financing in accordance with certain federal regulations, even where applicable state law prohibits such financing by state creditors. The revision to the comment permits those creditors to take advantage of footnote 43, whether or not they are subject to examination by the agencies issuing the regulations. A sentence has been added to the proposal to make clear that creditors using the footnote should look to the other federal regulations rather than to Regulation Z for the timing of the variable-rate disclosures.

Comment 18(f)-5 and the references to other regulations are also revised to reflect the citation to the Federal Home Loan Bank Board's amended adjustable mortgage loan regulation. A reference to the DIA has been added to the statutory references.

18(q) Assumption Policy

Comment 18(q)-1 is revised to include a cross-reference to comment 17(a)(1)-5, which permits creditors to state in the Truth in Lending disclosures that a due-on-sale clause is contained in the loan document.

Section 226.19 Certain residential mortgage transactions.

19(a) Time of Disclosure

Comment 19(a)-3 is revised to clarify when a creditor receives an application that is transmitted by an agent or broker. No change is intended to the general rule that "written application" is defined by the Real Estate Settlement Procedures Act and Regulation X.

Section 226.20 Subsequent disclosure requirements.

20(b) Assumptions

Comment 20(b)-1 is revised to make clear that assumptions other than those defined in § 226.20(b) do not require disclosures. The language has been modified from the proposal for greater clarity.

Comment 20(b)-7 is added to explain the relationship between the abbreviated disclosures of § 226.20(b)(1) through (5) and the general disclosure requirements of §§ 226.17 and 226.18.

The proposal would have added a comment discussing the timing of assumption disclosures. That comment has not been adopted because the issue is adequately addressed by the definition of consummation in

§ 226.2(a)(13).

Section 226.22 Determination of annual percentage rate.

References

The last sentence under 1981 Changes, reflecting the elimination of footnote 45a, is deleted in light of the reinstatement of that footnote.

Section 226.23 Right of rescission.

23(a) Consumer's Right to Rescind

Comment 23(a)(3)-3 is revised to clarify that the sale of the consumer's interest in the property terminates the right to rescind, even though the consumer is financing the transaction. The comment has been expanded from the proposal for illustrative purposes.

Subpart D—Miscellaneous

Section 226.28 Effect on State laws.

28(a) Inconsistent Disclosure Requirements

The commentary to § 226.28 is expanded by the addition of new comments 28(a)-8 through 28(a)-10, reflecting recent Board determinations on the effect of the Truth in Lending Act on certain consumer credit laws in Arizona, Florida and Missouri.

Section 226.29 State exemptions.

29(a) General Rule

Comment 29(a)-4 is revised to reflect three additional state exemptions from the Truth in Lending Act granted by the Board since publication of the previous commentary update. The reference to the Oklahoma exemption has been expanded from the proposal to provide more detail on the scope of that exemption.

Appendix D—Multiple-Advance Construction Loans

The commentary and references to Appendix D are revised to reflect the fact that creditors in certain multiple-advance transactions other than construction loans may also use the appendix.

Appendix H—Closed-End Model Forms and Clauses

Current comments H-17 through 20 as they reflect the approval under section 113 of the act of student loan disclosure forms issued by the Department of Education are removed. The loan programs to which the forms apply are exempt from the regulation under the recent DIA amendments to the Truth in Lending Act. New comments H-17 through 20 are added to reflect the approval under section 113 of the act of four student loan disclosure forms issued by the Department of Health and Human Services in conjunction with the

Health Education Assistance Loan (HEAL) program. That loan program remains subject to the requirements of the regulation.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Truth in lending, Penalties.

PART 226—[AMENDED]

§§ 226.2, 226.14, 226.22 [Amended]

4. Text of Regulatory Revisions. Pursuant to the authority granted in § 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board is amending Regulation Z, 12 CFR Part 226, by removing and reserving paragraph (a)(3), and reserving footnote 2 to paragraph (a)(3) of § 226.2; removing paragraph (a)(17)(ii) of § 226.2 and redesignating paragraphs (a)(17) (iii), (iv), and (v) as paragraphs (a)(17) (ii), (iii), and (iv), respectively; adding a new paragraph (f) to § 226.3; and removing the last sentence of both footnote 31a to § 226.14 and footnote 45a to § 226.22, to read as follows:

§ 226.3 Exempt transactions.

(f) Student loan programs. Loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

5. Text of Commentary Revisions. The revisions to the commentary (Supplement I to Part 226) read as follows:

Supplement I—Official Staff Commentary—TIL-1

* * * * *

Subpart A—General

* * * * *

§ 226.2 Definitions and rules of construction.

2(a) Definitions

* * * * *

2(a)(3) "Arranger of Credit"

The comment designation 2(a)(3) "Arranger of Credit" and comments 2(a)(3)-1 through 6 are deleted in their entirety.

* * * * *

2(a)(4) "Billing Cycle" or "Cycle"

1. Intervals. In open-end credit plans, the billing cycle determines the intervals for which periodic disclosure statements are required; these intervals are also used as measuring points for other duties of the creditor. Typically, billing cycles are monthly, but they may be more frequent or less frequent (but not less frequent than quarterly).

* * * * *

2(a)(17) "Creditor"

The word "five" in the first sentence of comment 2(a)(17)-1 is changed to the word "four". Comment 2(a)(17)(ii)-1 is deleted. Comment designations Paragraph (a)(17)(iv) and Paragraph 2(a)(17)(v) are redesignated Paragraph 2(a)(17)(iii) and Paragraph 2(a)(17)(iv). The reference to "section 226.2(a)(17)(iv)" in new comment 2(a)(17)(iii)-1 is changed to "section 226.2(a)(17)(iii)." The reference to "section 226.2(a)(17)(v)" in new comment 2(a)(17)(iv)-1 is changed to "section 226.2(a)(17)(iv)."

* * * * *

2(a)(18) "Downpayment"

1. Allocation. * * * (See the commentary to section 226.2(a)(23).)

* * * * *

2(a)(23) "Prepaid Finance Charge"

* * * * *

4. Allocation of lump-sum payments. In a credit sale transaction involving a lump-sum payment by the consumer and a discount or other item that is a finance charge under section 226.4, the discount or other item is a prepaid finance charge to the extent the lump-sum payment is not applied to the cash price. For example, a seller sells property to a consumer for \$10,000, requires the consumer to pay \$3,000 at the time of the purchase, and finances the remainder as a closed-end credit transaction. The cash price of the property is \$9,000. The seller is the creditor in the transaction and therefore the \$1,000 difference between the credit and cash prices (the discount) is a finance charge. (See the commentary to sections 226.4(b)(9) and 226.4(c)(5).) If the creditor applies the entire \$3,000 to the cash price and adds the \$1,000 finance charge to the interest on the \$6,000 to arrive at the total finance charge, all of the \$3,000 lump-sum payment is a downpayment and the discount is not a prepaid finance charge. However, if the creditor only applies \$2,000 of the lump-sum payment to the cash price, then \$2,000 of the \$3,000 is a downpayment and the \$1,000 discount is a prepaid finance charge.

2(a)(24) "Residential Mortgage Transaction"

* * * * *

5. Acquisition. A transaction is not "to finance the acquisition" of the consumer's principal dwelling (and therefore is not a residential mortgage transaction) if the consumer had previously purchase the dwelling and acquired some title to the dwelling, even though the consumer has not acquired full legal title. Thus, the following types of transactions are not residential mortgage transactions:

- The financing of a balloon payment due under a land sale contract.

• An extension of credit made to a joint owner of property to buy out the other joint owner's interest.

As a result, in giving the disclosures for these transactions several provisions of the regulation are not applicable, for example, the exceptions to the right of rescission (sections 226.23(f)(1) and 226.15(f)(1)), the early disclosure requirement (section 226.19(a)), and the disclosure concerning assumability (section 226.18(q)). In the following situation, by contrast, since the transaction is not a residential mortgage transaction, no disclosures are required by section 226.20(b) and therefore the right of rescission does not apply:

• A written agreement between a creditor holding a seller's mortgage and the buyer of the property which allows the buyer to assume the mortgage, where the buyer previously purchased the property and agreed with the seller to make the mortgage payments.

References

1981 changes:

"Arranger of Credit" * * * This definition was deleted effective October 1, 1982.

§ 226.3 Exempt transactions.

3(f) Student Loan Programs

1. *Coverage.* This exemption applies to the Guaranteed Student Loan program (administered by the federal government, state, and private non-profit agencies), the Auxiliary Loans to Assist Students (also known as PLUS) program, and the National Direct Student Loan program.

§ 226.4 Finance charge.

4(d) Insurance

10. *Single-interest insurance defined.* The term "single-interest insurance" as used in the regulation refers only to the types of coverage traditionally included in the term "vendor's single-interest insurance" (or "VSI"), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do

not qualify for exclusion from the finance charge under section 226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is \$1.00 or less (or \$5.00 or less in the case of a multi-year policy).

Subpart B—Open-End Credit

§ 226.5 General disclosure requirements.

5(a) Form of Disclosures

Paragraph 5(a)(2)

3. *Disclosure of figures—exception to "more conspicuous" rule.* The terms "annual percentage rate" and "finance charge" need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

5(b) Time of Disclosures

5(b)(1) Initial disclosures

3. *Reopening closed account.* If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new initial disclosures are required. No new initial disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the "new" account then continues on the same terms.

§ 226.8 Identification of transactions.

7. *Credit insurance offered through the creditor.* When credit insurance that is not part of the finance charge (for example, voluntary credit life insurance) is offered to the consumer through the creditor, but is actually provided by another company, the creditor has the option of identifying the premiums in one of two ways on the periodic statement. The creditor may describe the premiums using either the rule in section 226.8(a)(2) for "related" sellers and creditors, or the rule in section 226.8(a)(3) for "non-related" sellers and creditors. This means, therefore, that the creditor may identify the insurance either by providing, under section 226.8(a)(2), a brief identification of the services provided (for example, "credit life insurance"), or by disclosing, under section 226.8(a)(3), the name and address of the company providing the insurance (for example, ABC Insurance Company, New York, New York). In

either event, the creditor would, of course, also provide the amount and the date of the transaction.

§ 226.9 Subsequent disclosure requirements.

9(c) Change in Terms

9(c)(1) Written Notice Required

3. *Timing—advance notice not required.* Advance notice of 15 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change—in two circumstances:

• If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default

• If the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not "agreements" between the consumer and the creditor for purposes of section 226.9(c)(1): the consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

9(c)(2) Notice Not Required

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms

notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as "You may skip your October payment," or "We will waive your finance charges for January," may serve as the change-in-terms notice.

* * * * *

§ 226.15 Right of rescission.

* * * * *

Paragraph 15(a)(3)

* * * * *

4. *Unexpired right of rescission.* When the creditor has failed to take the action necessary to start the three-day rescission period running the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

- The expiration of three years after the occurrence giving rise to the right of rescission
- Transfer of all the consumer's interest in the property
- Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract

Transfer of all the consumer's interest includes such transfers as bequests and gifts. A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of § 226.15. A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.

* * * * *

Subpart C—Closed-End Credit

§ 226.17 General disclosure requirements.

17(a) Form of Disclosures

Paragraph 17(a)(1)

* * * * *

5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. Directly related information includes, for example, the following:

* * * * *

• A statement that a due-on-sale clause is contained in the loan document. For example, the disclosure given under section 226.18(q) may state, "Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms."

* * * * *

Paragraph 17(a)(2)

1. *When disclosures must be more conspicuous.* The following rules apply to the requirement that the terms "annual percentage rate" and "finance charge" be shown more conspicuously:

* * * * *

• The terms need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs)

* * * * *

17(i) Interim Student Credit Extensions

1. *Definition.* Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. These plans include loans made under any student credit plan, whether government or private, where the repayment period does not begin immediately. (Certain student credit plans that meet this definition are exempt from Regulation Z. See section 226.3(f).) Creditors in interim student credit extensions need not disclose the terms set forth in this paragraph at the time the credit is actually extended but must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under section 226.18.

* * * * *

Comment 17(i)-4 is removed. Comment 17(i)-5 is redesignated comment 17(i)-4.

* * * * *

§ 226.18 Content of disclosures.

* * * * *

18(f) Variable Rate

1. *Coverage.* The requirements of section 226.18(f) apply to all transactions in which the terms of the legal obligation allow the creditor to increase the rate originally disclosed to the consumer. It includes not only increases in the interest rate but also increases in other components, such as the rate of required credit life insurance. The provisions, however, do not apply to increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral.

* * * * *

5. *Other variable-rate regulations.* Transactions in which the creditor is required to comply with and has complied with variable-rate regulations of other federal agencies are exempt from the requirements of section 226.18(f), by virtue of footnote 43. Those variable-rate regulations include the adjustable mortgage loan instrument regulation issued by the Federal Home Loan Bank Board (12 CFR 545.6-2(a)) and the adjustable-rate mortgage regulation issued by the Comptroller of the Currency (12 CFR 29). The exception in footnote 43 is also available to creditors that are required by state law to comply with the federal variable-rate regulations noted above and to creditors that are authorized by Title VIII of the Depository Institutions Act of 1982 (Pub. L. 97-320) to make loans in accordance with those regulations. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

* * * * *

18(q) Assumption Policy

1. *Policy statement.* Because a creditor's assumption policy may be based on a variety of circumstances not determinable at the time the disclosure is made, the creditor may use phrases such as "subject to conditions" or "under certain circumstances" in complying with section 226.18(q). The provision requires only that the consumer be told whether or not a subsequent purchaser might be allowed to assume the obligation on its original terms and does not contemplate any explanation of the criteria or conditions for assumability. However, the creditor may state that a due-on-sale clause is contained in the loan document. (See comment 17(a)(1)-5 regarding directly related information.)

* * * * *

References

Statute: Section 128, the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320) and the Real Estate Settlement Procedures Act (12 U.S.C. 2602).

* * * * *

Other regulations: 12 CFR 545.6-2(a) and 12 CFR Part 29.

* * * * *

§ 226.19 Certain residential mortgage transactions.

19(a) Time of Disclosure

* * * * *

3. *Written application.* Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a "written application" has been received. In

general, Regulation X requires disclosures "to every person from whom the Lender receives or for whom it prepares a written application on an application form or forms normally used by the Lender for a Federally Related Mortgage Loan" (24 CFR 3500.6(a)). An application is received when it reaches the creditor in any of the ways applications are normally transmitted—by mail, hand delivery, or through an intermediary agent or broker. If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

§ 226.20 Subsequent disclosure requirements.

20(b) Assumptions

1. *General definition.* An assumption as defined in section 226.20(b) is a new transaction and new disclosures must be made to the subsequent consumer. An assumption under the regulation requires the following three elements:

- A residential mortgage transaction.
- An express acceptance of the subsequent consumer by the creditor.
- A written agreement.

The assumption of a nonexempt consumer credit obligation requires no disclosures unless all three elements are present. For example, an automobile dealer need not provide Truth in Lending disclosures to a customer who assumes an existing obligation secured by an automobile. However, a residential mortgage transaction with the elements described in § 226.20(b) is an assumption that calls for new disclosures; the disclosures must be given whether or not the assumption is accompanied by changes in the terms of the obligation. (See comment 2(a)(24)–5 for a discussion of assumptions that are not considered residential mortgage transactions.)

7. *Abbreviated disclosures.* The abbreviated disclosures permitted for assumptions of transactions involving add-on or discount finance charges must be made clearly and conspicuously in writing in a form that the consumer may keep. However, the creditor need not comply with the segregation requirement of § 226.17(a)(1). The terms "annual percentage rate" and "total of payments," when disclosed according to section 226.20(b) (4) and (5), are not subject to the description requirements of section 226.18 (e) and (h). The term "annual percentage rate" disclosed under section 226.20(b)(4) need not be more conspicuous than other disclosures.

§ 226.22 Determination of the annual percentage rate.

References

1981 changes: The section now provides a larger tolerance (1/4 of 1 percentage point) for irregular transactions.

§ 226.23 Right of rescission.

23(a) Consumer's Right to Rescind

Paragraph 23(a)(3)

3. *Unexpired right of rescission.* When the creditor has failed to take the action necessary to start the three-business day rescission period running, the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

- The expiration of three years after consummation of the transaction.
- Transfer of all the consumer's interest in the property.
- Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract.

Transfer of all the consumers' interest includes such transfers as bequests and gifts. A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of this section. A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.

Subpart D—Miscellaneous

§ 226.28 Effect on state laws.

28(a) Inconsistent Disclosure Requirements

8. *Preemption determination—Arizona.* Effective October 1, 1983, the Board has determined that the following provisions in the state law of Arizona are preempted by the Federal law:

- Section 44–287 B.5—Disclosure of final cash price balance. This provision is preempted in those transactions in which the amount of the final cash price

balance is the same as the Federal amount financed, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.

- Section 44–287 B.6—Disclosure of finance charge. This provision is preempted in those transactions in which the amount of the finance charge is different from the amount of the Federal finance charge, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount.

- Section 44–287 B.7—Disclosure of the time balance. The time balance disclosure provision is preempted in those transactions in which the amount is the same as the amount of the Federal total of payments, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.

9. *Preemption determination—Florida.* Effective October 1, 1983, the Board has determined that the following provisions in the State law of Florida are preempted by the Federal law:

- Sections 520.07(2)(f) and 520.34(2)(f)—Disclosure of amount financed. This disclosure is preempted in those transactions in which the amount is different from the Federal amount financed, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount.

- Sections 520.07(2)(g), 520.34(2)(g), and 520.35(2)(d)—Disclosure of finance charge and a description of its components. The finance charge disclosure is preempted in those transactions in which the amount of the finance charge is different from the Federal amount, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount. The requirement to describe or itemize the components of the finance charge, which is also included in these provisions, is not preempted.

- Sections 520.07(2)(h) and 520.34(2)(h)—Disclosure of total of payments. The total of payments disclosure is preempted in those transactions in which the amount differs from the amount of the Federal total of payments, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount than the Federal law.

- Sections 520.07(2)(i) and 520.34(2)(i)—Disclosure of deferred payment price. This disclosure is preempted in those transactions in which the amount is the same as the Federal total sale price, since in such transactions the State law requires the use of a different term than the Federal law to represent the same amount as the Federal law.

10. *Preemption determination—Missouri.* Effective October 1, 1983, the Board has determined that the following provisions in the State law of Missouri are preempted by the Federal law:

- Sections 365.070-6(9) and 408.260-5(6)—Disclosure of principal balance. This disclosure is preempted in those transactions in which the amount of the principal balance is the same as the Federal amount financed, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.

- Sections 365.070-6(10) and 408.260-5(7)—Disclosure of time price differential and time charge, respectively. These disclosures are preempted in those transactions in which the amount is the same as the Federal finance charge, since in such transactions the State law requires the use of a term different from the Federal law to represent the same amount.

- Sections 365.070-2 and 408.260-2—Use of the terms "time price differential" and "time charge" in certain notices to the buyer. In those transactions in which the State disclosure of the time price differential or time charge is preempted, the use of the terms in this notice also is preempted. The notice itself is not preempted.

- Sections 365.070-6(11) and 408.260-5(8)—Disclosure of time balance. The time balance disclosure is preempted in those transactions in which the amount is the same as the amount of the Federal total of payments, since in such transactions the State law requires the use of a different term than the Federal law to represent the same amount.

- Sections 365.070-6(12) and 408.260-5(9)—Disclosure of time sale price. This disclosure is preempted in those transactions in which the amount is the same as the Federal total sale price, since in such transactions the State law requires the use of a different term from the Federal law to represent the same amount.

* * * * *

§ 226.29 State exemptions.

29(a) General Rule

* * * * *

4. *Exemptions granted.* Effective October 1, 1982, the Board has granted the following exemptions from portions of the revised Truth in Lending Act:

- *Maine.* Credit or lease transactions subject to the Maine Consumer Credit Code and its implementing regulations

are exempt from chapters 2, 4 and 5 of the Federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor or lessor.)

- *Connecticut.* Credit transactions subject to the Connecticut Truth in Lending Act are exempt from chapters 2 and 4 of the Federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)

- *Massachusetts.* Credit transactions subject to the Massachusetts Truth in Lending Act are exempt from chapters 2 and 4 of the Federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)

- *Oklahoma.* Credit or lease transactions subject to the Oklahoma Consumer Credit Code are exempt from chapters 2 and 5 of the Federal act. (The exemption does not apply to §§ 132 through 135 of the Federal act, nor does it apply to transactions in which a federally chartered institution is a creditor or lessor.)

- *Wyoming.* Credit transactions subject to the Wyoming Consumer Credit Code are exempt from chapter 2 of the Federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)

* * * * *

Appendix D—Multiple-Advance Construction Loans

1. *General rule.* Appendix D provides a special procedure that creditors may use, at their option, to estimate and disclose the terms of multiple-advance construction loans when the amounts or timing of advances is unknown at consummation of the transaction. This appendix reflects the approach taken in section 226.17(c)(6)(ii), which permits creditors to provide separate or combined disclosures for the construction period and for the permanent financing, if any; i.e., the construction phase and the permanent phase may be treated as one transaction or more than one transaction. Appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or timing of advances is unknown at consummation.

2. *Variable-rate multiple-advance loans.* The hypothetical disclosure required in most variable-rate transactions by § 226.18(f)(4) is not required for multiple-advance loans

disclosed pursuant to Appendix D, Part I.

* * * * *

References

* * * * *

1981 *Changes:* The use of Appendix D is limited to multiple-advance loans for construction purposes or analogous types of transactions.

* * * * *

Appendix H—Closed-End Model Forms and Clauses

* * * * *

17. *HRSA-500-1 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-500-1 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all Health Education Assistance Loans (HEAL) with a variable interest rate that are interim student credit extensions as defined in Regulation Z.

18. *HRSA-500-2 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-500-2 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate that are interim student credit extensions as defined in Regulation Z.

19. *HRSA-502-1 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-502-1 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a variable interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

20. *HRSA-502-2 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-502-2 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 31, 1983.
William W. Wiles,

Secretary of the Board.

[FR Doc. 83-8874 Filed 4-1-83; 2:13 pm]

Board of Governors of the Federal Reserve System

ELECTRONIC FUND TRANSFERS

AMENDMENTS TO REGULATION E

AND UPDATE TO OFFICIAL STAFF COMMENTARY ON REGULATION E

(effective April 1, 1983)

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Doc. R-0449]

Electronic Fund Transfers; Technical Amendments and Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and official staff interpretation.

SUMMARY: The Board is adopting technical amendments to Regulation E (Electronic Fund Transfers) to conform certain provisions that refer to Regulation Z (Truth in Lending). These changes reflect redesignated sections in revised Regulation Z. This notice also contains changes to the official staff commentary, which applies and interprets the requirements of Regulation E.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: John C. Wood or Jesse B. Filkins, Senior Attorneys, or Gerald P. Hurst, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-2412 or (202) 452-3867.

SUPPLEMENTARY INFORMATION:

1. *General.* The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*)

governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205). The Board's staff has also issued an official commentary that interprets the regulation (EFT-2).

2. *Explanation of revisions.*

Regulation. Regulation E contains certain provisions that describe the relationship between the rules governing electronic fund transfers and Regulation Z (Truth in Lending). These provisions cover issuance of access devices, § 205.5(c)(1)(ii) and 205.5(c)(2)(i); liability for unauthorized transfers, § 205.6(d)(1)(i); documentation of transfers, § 205.9(b)(3); and procedures for resolving errors, § 205.11(i). The changes set forth below relate to the updating of Regulation Z sectional references. These changes are needed because Regulation Z sections were redesignated when the Board revised Regulation Z, pursuant to the Truth in Lending Simplification and Reform Act of 1980.

Commentary. This is the first periodic update to the Official Staff Commentary on Regulation E, which was published in September 1981 (46 FR 46876). These changes were proposed for comment on February 2, 1983 (48 FR 4667). Some of the revisions to the commentary relate to amendments to the regulation published on October 12, 1982 (47 FR

44708). Other changes respond to various questions that have arisen concerning Regulation E since the commentary was originally published. Questions that are being added between existing questions are designated "5"—for example, question 2-5.5 belongs after question 2-5.

It is contemplated that future updates to the commentary will be published annually, unless circumstances dictate more frequent revision. The staff expects to publish the next proposal in November 1983 for a 60-day comment period, and to issue a final version in the first quarter of 1984.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Federal Reserve System.

3. *Text of regulatory revisions.*

Pursuant to the authority granted in Section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*), the Board amends Regulation E, 12 CFR Part 205, by revising §§ 205.5(c)(1)(ii), 205.5(c)(2)(i), 205.6(d)(1)(i), 205.9(b)(3), and 205.11(i) to refer to the revised sections of Regulation Z, to read as follows:

§ 205.5 Issuance of access devices.

* * * * *

(c) *Relation to Truth in Lending* (1)

* * *

(ii) Addition to an accepted credit

PRINTED IN NEW YORK, FROM FEDERAL REGISTER, VOL. 48, NO. 67

For this Regulation to be complete, retain:

- 1) Regulation E pamphlet, dated May 10, 1980.
- 2) Official Staff Commentary on Regulation E, dated October 1981 (*furnished only upon request*).
- 3) Various amendments included in slip sheet dated December 1982.
- 4) This slip sheet.

[Enc. Cir. No. 9482]

card, as defined in 12 CFR 226.12(a)(2) footnote 21 (Regulation Z), of the capability to initiate electronic fund transfers; and

* * * * *
(2) * * *

(i) Issuance of credit cards as defined in 12 CFR 226.2(a)(15);

* * * * *

§ 205.6 Liability of consumer for unauthorized transfers.

* * * * *

(d) *Relation to Truth in Lending.* (1)

(i) Was initiated by use of an access device that is also a credit card as defined in 12 CFR 226.2(a)(15), or

* * * * *

§ 205.9 Documentation of transfers.

* * * * *

(b) *Periodic statements.* * * *

(3) The total amount of any fees or charges, other than a finance charge under 12 CFR 226.7(f), assessed against the account during the statement period for electronic fund transfers or the right to make such transfers, or for account maintenance.

* * * * *

§ 205.11 Procedures for resolving errors.

* * * * *

(i) *Relation to Truth in Lending.* Where an electronic fund transfer also involves an extension of credit under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the financial institution shall comply with the requirements of this section rather than those of 12 CFR 226.13 (a), (b), (c), (e), (f), and (h).

* * * * *

4. *Text of commentary revisions.* The revisions to the Official Staff Commentary to Regulation E (EFT-2, 12 CFR Part 205) read as follows:

Supplement II—Official Staff Commentary—EFT-2

* * * * *

§ 205.2 Definitions and rules of construction.

* * * * *

Q 2-5.5: *Retail repurchase agreements.* A retail repurchase agreement (repo) is essentially a loan made to a financial institution by a consumer that is collateralized by

government or government-insured securities. Is a repo an account for purposes of Regulation E?

A: While repos may not be deposits for purposes of some other banking regulations, repos are accounts as defined in Regulation E. (§ 205.2(b))

* * * * *

Q 2-12.5: *Fund transfer—withholding of income tax on interest.* A financial institution electronically debits a portion of the interest on a consumer account for transmittal to the Internal Revenue Service, to comply with withholding requirements. Is the debit subject to the regulation?

A: No. (§ 205.2(g))

* * * * *

Q 2-25.5: *Card-activated telephones.* Does the regulation cover transfers to pay for calls made from a telephone that is activated when the consumer inserts a card into a magnetic strip or card reader, and does the terminal receipt requirement apply?

A: The regulation applies to transfers initiated electronically. As a result the electronic transfers from a consumer's account to pay for telephone calls are covered by the regulation as electronic fund transfers. A receipt is not required provided the only transfer of funds occurring as a result of the use of the card at the combination telephone/reader is to pay for the charges incurred by use of the telephone. (§ 205.2(h))

* * * * *

Q 2-27: *Unauthorized transfers—access device obtained from the consumer.* A consumer is robbed or induced by fraud to furnish another person with an access device. Are transfers initiated at an ATM by the person who obtained the access device from the consumer "unauthorized electronic fund transfers"?

A: The transfers are unauthorized for purposes of Regulation E. Although the definition of "unauthorized electronic fund transfer" excludes any transfer initiated by a person "who was furnished with the access device to the consumer's account by the consumer," it assumes that the consumer has authorized the person to make transfers with the access device. This exclusion does not apply when the access device is "furnished" as the result of a robbery, or as the result of a fraud on the consumer in which the consumer does not authorize the use of the access device to make transfers. But if the consumer furnishes an access device and grants actual authority to make

transfers to another person (a family member or coworker, for example) who then exceeds that authority, the consumer is liable for the transfers unless the financial institution has been notified that transfers by that person are no longer authorized. (§ 205.2(l))

* * * * *

§ 205.3 Exemptions.

* * * * *

Q 3-19.5: *Telephone transfers—money market deposit accounts, retail repurchase agreements.* Are telephone transfers between a money market deposit account (or a retail repo account) and another account within the institution subject to the regulation?

A: The answer depends on whether the transfers are made pursuant to a written plan or agreement in which periodic or recurring transfers are contemplated. An agreement that merely permits the consumer to telephone institutions for the rollover of all or a portion of the funds at maturity does not meet this test. (§ 205.3(e))

* * * * *

Q 3-22: *Small institution exemption—grace period.* If the assets of a previously exempt financial institution exceed \$25 million on December 31, when must the institution begin complying with the regulation?

A: Such an institution would have a one-year grace period. For example, if the assets exceed \$25 million on December 31, 1983, compliance is not required until January 1, 1985. On the other hand, a previously covered institution whose assets fall below \$25 million on December 31, 1983, may take advantage of the exemption beginning on January 1, 1984. (§ 205.3(g))

* * * * *

§ 205.7 Initial disclosure of terms and conditions.

* * * * *

Q 7-18.5: *Error-resolution disclosure—foreign-initiated transfers.* The regulation expands the time periods for resolving errors that involve transfers initiated outside the United States, from 10 to 20 business days and from 45 to 90 calendar days. Must the error-resolution disclosure reflect the longer time periods with respect to accounts on which transfers may be initiated outside the United States?

A: The financial institution may but need not refer to the longer time periods in the error-resolution disclosure.

(§§ 205.7(a)(10), 205.8(b), and 205.11(c)(4))

* * * * *

§ 205.9 Documentation of transfers.

* * * * *

Q 9-9: Receipts—type of account. A footnote states that the type of account need not be identified if the access device used to initiate the transfer can access only one account at a given terminal. When does this exception apply?

A: The exception applies to point-of-sale terminals, ATMs, and any other electronic terminals. It is available even if the access device can access more than one account when used at another terminal. For example, it is available when, in a shared ATM system, an access device can access only one account at a terminal operated by an institution other than the account-holding institution, even though the access device can access more than one account at terminals operated by the account-holding institution. Moreover, account refers only to asset accounts. If a consumer can use an access device at a terminal to debit an asset account and also to access a credit line, for example, the exception is still available. (§ 205.9(a)(3), footnote 3)

* * * * *

Q 9-10.5: Receipts—type of account, interchange system. What about an interchange system in which consumers can access multiple accounts of the same type at their account holding institution's terminals, but only a primary account of each type of other terminals in the system—may the receipt at such other terminals describe the account in terms of "checking" or "savings," without unique identification?

A: Yes. (§ 205.9(a)(3), footnote 3)

* * * * *

Q 9-16: Periodic statements—frequency. How often must periodic statements be sent for accounts that are subject to the regulation?

A: A monthly statement is required for any account to or from which an EFT has occurred during the month, if the account is one that can be debited electronically (by use of an access device, telephone bill-payment service, or preauthorized transfers from the consumer's account, for example) or if

the account can be credited electronically by other than preauthorized deposits. If no transfers occur during some months, the statement must be provided at least quarterly.

There are certain exceptions for accounts on which the only EFT service relates to preauthorized credits. The institution may send quarterly statements or, if the account is a passbook account, the institution may simply update the passbook when it is presented for updating (with the amount and date of each EFT since the last update).

Also, to eliminate duplicative statements, the regulation provides an exception from the periodic statement requirement for certain intra-institutional transfers between a consumer's accounts. This exception does not alter the statement provisions, however, with respect to accounts that receive preauthorized credits; such accounts continue to acquire quarterly statements or passbook updates. (§ 205.9(b), (c), (d), and (h))

* * * * *

Q 9-22 (Reserved.)

* * * * *

Q 9-26: Periodic statements—terminal location omitted. When a consumer makes a deposit at an ATM, the institution need not identify the ATM location on the periodic statement. Does the consumer's request for the terminal location (or any other information about the deposit) trigger the error resolution procedures under the regulation?

A: Yes, if the request for the location is made in accordance with the requirements of the error resolution section. However, in responding the institution need only provide the consumer with the ATM location if it has captured that information with regard to deposits. If the consumer merely calls to ascertain whether or not a deposit (ATM, preauthorized, or any other type of electronic transfer) was credited to the account, the error resolution procedures do not apply. (§§ 205.9(b)(1)(iv), footnote 4a, and 205.11(a)(7))

* * * * *

Q 9-50: Periodic statements—transfers between accounts. The regulation provides that an account is

excepted from the periodic statement requirements for transfers to or from another account of the consumer within the institution, if these transfers are described on a complying statement for the other account. What effect does this have on the periodic statement requirements for accounts that also are accessed by other electronic transfer activity?

A: The exception applies only to the transfers between accounts. The financial institution must comply with the applicable periodic statement requirements for any other electronic transfers to or from the account. For example, a quarterly Regulation E statement must be sent for an account that also receives payroll deposits electronically; and a Regulation E statement must be sent for any month in which an account is also accessed by a withdrawal at an ATM. However, a financial institution need not comply with the Regulation E requirements on such statements for transfers that are otherwise exempt, such as the transfers between accounts discussed above. (§§ 205.9(c), (d), and (h))

Q 9-51: Periodic statements—foreign-initiated transfers. Failure to provide terminal receipts and periodic statements for transfers initiated outside the United States is deemed not to be a failure to comply with the regulation if an inquiry or request for documentation is treated as a notice of an error. What does this mean?

A: The relaxation in documentation requirements takes account of the fact that some foreign-based terminals do not capture all of the information required by the regulation. However, it is expected that the institution would make a good faith attempt to provide on the periodic statements the information required by the regulation to identify the transfer. For example, even though the institution may not be able to provide the location of the specific terminal, it should, if possible, identify the country and city in which the transfer was initiated. (§ 205.9(i))

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 31, 1983.

William W. Wiles,
Secretary of the Board.

[FR Doc. 83-8875 filed 4-1-83; 2:13 pm]