

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. 9498 ]  
[ May 18, 1983 ]

**REGULATION Z**  
**Proposed Preemption Determinations**

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

The Board of Governors of the Federal Reserve System has issued proposed determinations on applications as to whether certain provisions in the laws of Mississippi, New Jersey, Oklahoma, and South Carolina are inconsistent with the Truth in Lending Act or Regulation Z and are therefore preempted. Comments on this matter should be submitted by July 11, 1983, and may be sent to our Regulations Division.

Printed below is the text of the Board's Notice of Intent as it pertains to the New Jersey statutes, which has been extracted from the *Federal Register* of May 9, 1983.

ANTHONY M. SOLOMON,  
*President.*

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**12 CFR Part 226**

**[Reg. Z; Doc. No. R-0466]**

**Truth In Lending; Intent To Make  
Determinations of Effect on State  
Laws; Mississippi, New Jersey,  
Oklahoma, and South Carolina**

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

**ACTION:** Notice of intent to make  
preemption determinations.

**SUMMARY:** The Board is publishing for  
comment proposed determinations as to  
whether certain provisions in the laws

of Mississippi, New Jersey, Oklahoma,  
and South Carolina are inconsistent  
with the Truth in Lending Act or  
Regulation Z and therefore preempted.  
Any determinations that provisions are  
preempted, which would trigger the  
prohibition against giving such  
preempted disclosures, will have an  
effective date of October 1, 1984,  
although creditors will have the option  
of complying from the date of the  
Board's determination.

This notice also includes a discussion  
of the procedures that the Board follows  
upon receipt of a request for a  
determination and a statement of the  
principles used in making preemption  
determinations.

**DATE:** Comments must be received on or  
before July 11, 1983.

**ADDRESS:** Comments should be mailed  
to William W. Wiles, Secretary, Board  
of Governors of the Federal Reserve  
System, Washington, D.C. 20551, or  
delivered to Room B-2223, 20th and  
Constitution Avenue, N.W., Washington,  
D.C., between 8:45 a.m. and 5:15 p.m.  
Comments may be inspected in Room B-  
1122 between 8:45 a.m. and 5:15 p.m.

**FOR FURTHER INFORMATION CONTACT:**  
Rugenia Silver or Gerald Hurst, Staff  
Attorneys, Division of Consumer and  
Community Affairs, Board of Governors  
of the Federal Reserve System,  
Washington, D.C. 20551, at (202) 452-2412  
or 452-3667.

(OVER)



#### SUPPLEMENTARY INFORMATION: (1)

*General.* The Board has received four requests for determinations as to whether provisions of certain laws in Mississippi, New Jersey, Oklahoma, and South Carolina are inconsistent with the Truth in Lending Act and Regulation Z, and therefore preempted. Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether any inconsistency exists between chapters 1, 2, and 3 of the federal act or regulation and any state law relating to the disclosure of information in connection with consumer credit transactions. These proposed preemption determinations are issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(h)(2); 48 FR 4454, February 1, 1983).

The procedures for requesting a determination and the general procedures followed in making a determination are contained in Appendix A to 12 CFR Part 226. In addition, in order to obtain information and comment from interested parties as early as possible in the course of making determinations, the Board: (1) Forwards copies of requests for determinations to the attorneys general of the states involved and to the Federal Reserve Banks in whose districts the states are located, shortly after receipt of the requests, and (2) sends copies of the proposed determinations and final determinations directly to the requesting party, the state attorney general, and the Federal Reserve Bank.

(2) *Principles followed in preemption analysis.* In determining whether a state law is inconsistent with the federal provisions, § 226.28(a)(1) of Regulation Z, which implements § 111 of the act, provides that state requirements are inconsistent with the federal provisions if the state law requires a creditor to make disclosures or take actions that contradict the federal law. A state law is contradictory, and therefore preempted, if it significantly impedes the operation of the federal law or interferes with the purposes of the federal statute. Two examples of contradictory state laws are included in § 226.28(a)(1). They are: (1) A law that requires the use of the same term for a different amount or

a different meaning than the federal law, or (2) a law that requires the use of a different term than the federal term to describe the same item.

In previous preemption determinations (48 FR 4454, February 1, 1983) the Board developed the following principles that were applied in making the current proposed determinations:

- For purposes of making preemption determinations, state law is deemed to require the use of specific terminology in the state disclosures if the statute uses certain terminology in the disclosure provision.

- A state disclosure does not "describe the same item," under § 226.28(a)(1), if it is not the functional equivalent of a federal disclosure.

- Preemption occurs only in those transactions in which an actual inconsistency exists between the state law and the federal law.

- A state law is not inconsistent merely because it requires more information than federal law or requires disclosure in transactions where federal law requires none.

In general, preemption determinations will be limited to those provisions of state law identified in the request for a determination. At the Board's discretion, however, other state provisions that may be affected by the federal law will also be addressed.

(3) *Effect of preemption determination.* If the Board determines that a state-required disclosure is inconsistent with the federal law, the state law is preempted to the extent of the inconsistency. Creditors in that state may not make disclosures using the inconsistent term or form, even on a separate document from the federal disclosures. Preemption determinations have an effective date of the October 1 that follows the determination by at least 6 months, as required by section 105(d) of the act. It is expected that these proposed determinations, if adopted, will have an effective date of October 1, 1984, although creditors could begin complying with the determinations before that time.

A determination on provisions in the law of one state will have no effect on the validity of similar provisions in other states.

(4) *Discussion of specific requests and proposed derterminations.* In response

to four requests, the Board has reviewed provisions in the laws of Mississippi, New Jersey, Oklahoma, and South Carolina. (The requests are available for public inspection and copying, subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261).) The proposed determinations regarding the state laws at issue, together with the reasons for the proposals, are set forth below.

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*New Jersey.* An attorney has requested a determination of whether a New Jersey law relating to the use of agents in mortgage transactions is inconsistent with and therefore preempted by the Truth in Lending Act and Regulation Z. Under § 46:6-1 of New Jersey Statutes Annotated, a consumer may empower an agent to act on his or her behalf in completing a mortgage transaction. The actions which the agent is authorized to take may include attending the closing, and signing and receiving documents such as the note, mortgage, Truth in Lending disclosures and notice of the right of rescission.

Regulation Z requires that disclosures and notice of the right of rescission, if applicable, be given to the "consumer" in the transaction. However, the regulation does not prohibit the creditor from giving this material to an agent acting on behalf of the consumer under a valid state agency law. For this reason, the Board believes that the New Jersey law permitting the use of an agent for receipt of loan documents, including the Truth in Lending disclosures and rescission notices, is not preempted by the Truth in Lending Act and Regulation Z, because creditors may comply with the federal act and regulation by providing the required disclosures and notices to an agent for the consumer.

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(5) *Comment requested.* Interested persons are invited to submit comments regarding the proposed determinations. After the close of the comment period and analysis of the comments received, notice of final action on the proposals will be published in the **Federal Register**.

Board of Governors of the Federal Reserve System, May 3, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-12238 Filed 5-6-83; 8:45 am]