

At-Dis. No. 9920 (A)

September 10, 1985

To All Depository Institutions in the
Second Federal Reserve District, and Others
Maintaining Sets of Board Regulations:

Enclosed is a copy of Regulation AA, "Unfair or Deceptive Acts or Practices," of the Board of Governors of the Federal Reserve System, as amended effective January 1, 1986. The regulation has been reprinted by the Board in the new smaller size and replaces previous printings of that regulation, together with all amendments thereto.

Circulars Division
FEDERAL RESERVE BANK OF NEW YORK

Af-lin.no. 9920(a)

Regulation AA Unfair or Deceptive Acts or Practices

12 CFR 227; as amended effective January 1, 1986



Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

July 1985

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Regulation AA

Unfair or Deceptive Acts or Practices

12 CFR 227; effective September 27, 1976; amended effective January 1, 1986*

SUBPART A—CONSUMER COMPLAINTS

SECTION 227.1—Definitions

For the purposes of this part,¹ unless the context indicates otherwise, the following definitions apply:

(a) *Board* means the Board of Governors of the Federal Reserve System.

(b) *Consumer complaint* means an allegation by or on behalf of an individual, group of individuals, or other entity that a particular act or practice of a state member bank is unfair or deceptive, or in violation of a regulation issued by the Board pursuant to a federal statute, or in violation of any other act or regulation under which the bank must operate.

(c) *State member bank* means a bank that is chartered by a state and is a member of the Federal Reserve System.

(d) Unless the context indicates otherwise, “bank” shall be construed to mean a “state member bank,” and “complaint” to mean a “consumer complaint.”

SECTION 227.2—Consumer-Complaint Procedure

(a) *Submission of complaints.* (1) Any consumer having a complaint regarding a state member bank is invited to submit it to the Federal Reserve System. The complaint should be submitted in writing, if possible, and should include the following information:

(i) a description of the act or practice that is thought to be unfair or deceptive, or in violation of existing law or regulation, including all relevant facts;

(ii) the name and address of the bank that is the subject of the complaint; and
(iii) the name and address of the complainant.

(2) Consumer complaints should be made to:

(i) the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551; or

(ii) the Federal Reserve Bank of the District in which the bank is located. The addresses of the Federal Reserve Banks are as follows:

Federal Reserve Bank of Boston
600 Atlantic Avenue
Boston, Massachusetts 02106

Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045

Federal Reserve Bank of Philadelphia
100 North 6th Street
Philadelphia, Pennsylvania 19105

Federal Reserve Bank of Cleveland
1455 East Sixth Street
Cleveland, Ohio 44101

Federal Reserve Bank of Richmond
701 E. Byrd Street
Richmond, Virginia 23219

Federal Reserve Bank of Atlanta
104 Marietta Street, N.W.
Atlanta, Georgia 30303

Federal Reserve Bank of Chicago
230 South LaSalle Street
Chicago, Illinois 60690

Federal Reserve Bank of St. Louis
411 Locust Street
St. Louis, Missouri 63166

Federal Reserve Bank of Minneapolis
250 Marquette Avenue
Minneapolis, Minnesota 55480

Federal Reserve Bank of Kansas City
925 Grand Avenue
Kansas City, Missouri 64198

* Subpart A is effective September 27, 1976. Subpart B is effective January 1, 1986.

¹ The words “this part,” as used herein, mean title 12, chapter II, part 227 of the Code of Federal Regulations, cited as 12 CFR 227 and designated as Regulation AA.

Federal Reserve Bank of Dallas
400 South Akard Street
Dallas, Texas 75222

Federal Reserve Bank of San Francisco
400 Sansome Street
San Francisco, California 94120

(b) *Response to complaints.* Within 15 business days of receipt of a written complaint by the Board or a Federal Reserve Bank, a substantive response or an acknowledgment setting a reasonable time for a substantive response will be sent to the individual making the complaint.

(c) *Referrals to other agencies.* Complaints received by the Board or a Federal Reserve Bank regarding an act or practice of an institution other than a state member bank will be forwarded to the federal agency having jurisdiction over that institution.

SUBPART B—CREDIT PRACTICES RULE

SECTION 227.11—Authority, Purpose, and Scope

(a) *Authority.* This subpart is issued by the Board under section 18(f) of the Federal Trade Commission Act, 15 USC 57a(f) (§ 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93-637).

(b) *Purpose.* Unfair or deceptive acts or practices in or affecting commerce are unlawful under section 5(a)(1) of the Federal Trade Commission Act, 15 USC 45(a)(1). This subpart defines unfair or deceptive acts or practices of banks in connection with extensions of credit to consumers.

(c) *Scope.* This subpart applies to all banks and their subsidiaries, except savings banks that are members of the Federal Home Loan Bank System. Compliance is to be enforced by—

(1) the Comptroller of the Currency, in the case of national banks and banks oper-

ating under the code of laws for the District of Columbia;

(2) the Board of Governors of the Federal Reserve System, in the case of banks that are members of the Federal Reserve System (other than banks referred to in paragraph (c)(1) of this section); and

(3) the Federal Deposit Insurance Corporation, in the case of banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in paragraphs (c)(1) and (c)(2) of this section).

SECTION 227.12—Definitions

For the purposes of this subpart, the following definitions apply:

(a) “Consumer” means a natural person who seeks or acquires goods, services, or money for personal, family, or household use other than for the purchase of real property.

(b)(1) “Cosigner” means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account.

(2) “Cosigner” includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer’s obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a “cosigner,” whether or not the person is designated as such on the credit obligation.

(c) “Earnings” means compensation paid or payable to an individual or for the individual’s account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic pay-

ments pursuant to a pension, retirement, or disability program.

(d) "Household goods" means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer's dependents. The term "household goods" does not include—

- (1) works of art;
- (2) electronic entertainment equipment (other than one television and one radio);
- (3) items acquired as antiques; that is, items over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character; and
- (4) jewelry (other than wedding rings).

(e) "Obligation" means an agreement between a consumer and a creditor.

(f) "Person" means an individual, corporation, or other business organization.

SECTION 227.13—Unfair Credit-Contract Provisions

It is an unfair act or practice for a bank to enter into a consumer credit obligation that contains, or to enforce in a consumer credit obligation purchased by the bank, any of the following provisions:

(a) *Confession of judgment.* A cognovit or confession of judgment (for purposes other than executory process in the state of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(b) *Waiver of exemption.* An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) *Assignment of wages.* An assignment of wages or other earnings unless—

- (1) the assignment by its terms is revocable at the will of the debtor;
- (2) the assignment is a payroll deduction plan or preauthorized-payment plan, com-

mencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or

(3) the assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) *Security interest in household goods.* A nonpossessory security interest in household goods other than a purchase-money security interest.

SECTION 227.14—Unfair or Deceptive Practices Involving Cosigners

(a) Prohibited practices. In connection with the extension of credit to consumers, it is—

- (1) a deceptive act or practice for a bank to misrepresent the nature or extent of cosigner liability to any person; and
- (2) an unfair act or practice for a bank to obligate a cosigner unless the cosigner is informed prior to becoming obligated of the nature of the cosigner's liability.

(b) *Disclosure requirement.* (1) A clear and conspicuous disclosure statement shall be given in writing to the cosigner prior to becoming obligated. The disclosure statement shall be substantially similar to the following statement and shall either be a separate document or included in the documents evidencing the consumer credit obligation.

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The bank can collect this debt from you without first trying to collect from the borrower. The bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

(2) In the case of open-end credit, the disclosure statement shall be given to the cosigner prior to the time that the cosigner becomes obligated for fees or transactions on the account.

(3) A bank that is in compliance with this paragraph may not be held in violation of paragraph (a)(2) of this section.

SECTION 227.15—Unfair Late Charges

(a) In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a bank to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(b) For the purposes of this section, “collecting a debt” means any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of money due (or alleged to be due) from a consumer.

SECTION 227.16—State Exemptions

(a) *General rule.* (1) An appropriate state agency may apply to the Board for a determination that—

(i) there is a state requirement or prohibition in effect that applies to any transaction to which a provision of this subpart applies; and

(ii) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this subpart.

(2) If the Board makes such a determination, the provision of this subpart will not be in effect in that state to the extent specified by the Board in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively.

(b) *Applications.* The procedures under which a state agency may apply for an exemption under this section are the same as those set forth in appendix B to Regulation Z (12 CFR 226).

Magnuson-Moss Warranty—Federal Trade Commission Improvement Act

15 USC 2301; 88 Stat. 2183; Pub. L. 93-637 (January 4, 1975)

TITLE II—FEDERAL TRADE COMMISSION IMPROVEMENTS

SECTION 202—Rulemaking

(a) The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by redesignating section 18 as section 21, and inserting after section 17 the following new section:

“Section 18

* * * * *

“(f)(1) In order to prevent unfair or deceptive acts or practices in or affecting commerce (including acts or practices which are unfair or deceptive to consumers) by banks, each agency specified in paragraph (2) of this subsection shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by banks subject to its jurisdiction. The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices. Whenever the Commission prescribes a rule under subsection (a)(1)(B) of this section, then within 60 days after such rule takes effect such Board shall promulgate substantially similar regulations prohibiting acts or practices of banks which are substantially similar to those prohibited by rules of the Commission and which impose substantially similar requirements, unless such Board finds that (A) such acts or practices of banks are not unfair or deceptive, or (B) that implementation of similar regulations with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board, and publishes any such finding, and the reasons therefor, in the Federal Register.

“(2) Compliance with regulations pre-

scribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act, in the case of—

“(A) national banks and banks operating under the code of law for the District of Columbia, by the division of consumer affairs, established by the Comptroller of the Currency;

“(B) member banks of the Federal Reserve System (other than banks referred to in subparagraph (A)) by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

“(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)), by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation.

“(3) For the purpose of the exercise by any agency referred to in paragraph (2) of its powers under any Act referred to in that paragraph, a violation of any regulation prescribed under this subsection shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (2), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with any regulation prescribed under this subsection, any other authority conferred on it by law.

“(4) The authority of the Board of Governors of the Federal Reserve System to issue regulations under this subsection does not impair the authority of any other agency designated in this subsection to make rules respecting its own procedures in enforcing compliance with regulations prescribed under this subsection.

“(5) Each agency exercising authority under this subsection shall transmit to the Congress not later than March 15 of each year a detailed report on its activities under this paragraph during the preceding calendar year.