

RULES and REGULATIONS

FEDERAL RESERVE SYSTEM

12 CFR Part 226

(Regulation Z; Docket No. R-0805)

Truth in Lending

Thursday, July 29, 1993

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule; temporary exceptions.

SUMMARY: The Board is publishing a final rule amending Regulation Z (which implements the Truth in Lending Act). The amendment provides a temporary exception to Regulation Z provisions that prohibit the use of a preprinted form by a creditor to obtain a consumer's waiver of the right to rescind certain home-secured loans when loan proceeds are needed immediately to meet a consumer's bona fide personal financial emergency. Generally, Regulation Z requires a mandatory three-day waiting period on rescindable transactions before funds can be disbursed. In addition, a consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency for purposes of Regulation Z for transactions secured by consumers' principal dwellings located in areas of the Midwest recently declared to be major disaster areas because of extensive flooding. The exception expires one year from the date the area was declared a major disaster.

EFFECTIVE DATE: July 29, 1993.

FOR FURTHER INFORMATION CONTACT: Adrienne Hurt, Managing Counsel, or Jane Jensen Gell, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background.

Under the Truth in Lending Act (TILA), 15 USC 1601-1666j, and Regulation Z, 12 CFR part 226, with some exceptions, a consumer has the right to rescind a credit obligation secured by the consumer's principal dwelling for three days after becoming obligated, due to the risk of loss of the consumer's home in the event of default. There is a mandatory waiting period of three business days before funds can be disbursed in order to give consumers an opportunity to reflect on the loan terms and to elect to cancel the transaction (12 CFR 226.15 and 226.23). A consumer may modify or waive this right of rescission to meet a bona fide personal financial emergency. The consumer must provide the creditor with a written, signed and dated waiver statement that describes the emergency. Under Regulation Z, 12 CFR 226.15(e) and 226.23(e), the waiver statement may not be executed on a preprinted form.

In November 1992, the Board adopted an exception to Regulation Z for transactions secured by homes located in areas declared major disaster areas as a result of Hurricanes Andrew and Iniki and the April 1992 Los Angeles civil unrest. (57 FR 53,545 (Nov. 12, 1992)). The Board's exception permitted a temporary waiver of the provisions in Regulation Z that prohibit an institution's use of a preprinted form to obtain a consumer's waiver of the right to rescind certain home-secured loans when loan funds were needed immediately to meet a consumer's bona fide personal financial emergency. In addition, a consumer's need to obtain funds immediately was regarded as a bona fide personal financial emergency, for purposes of Regulation Z, where the home securing the loan was located in the disaster area.

(2) Relief for Flood Affected Communities

From April through July of 1993, extensive flooding has occurred in several Midwestern States and, as a result, the President has determined that extensive major disaster areas exist in those states. To aid consumers in obtaining credit speedily to begin repairs in flood damaged areas and to ease the paperwork burden on creditors extending credit in these areas, the Board has determined to provide a temporary exception to the restrictions in §§ 226.15(e) and 226.23(e) of Regulation Z. This exception will expire one year from the date the President declared that an area was a major disaster.

The Board is amending Regulation Z to permit a temporary exception to its provisions that prohibit the use of a preprinted form by a creditor to obtain a consumer's waiver of the right to rescind certain home-secured loans. In addition, a consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency, where the home securing the loan is located in the disaster area. The exception is limited to loans secured by homes located in areas that the President has declared, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5170, are major disaster areas as a result of the extensive flooding in 1993 in the Midwest. The exception expires one year from the date an area was declared a major disaster. The Board notes, however, that the consumer must still sign and date the waiver statement. The following counties in Minnesota, Wisconsin, Missouri, Iowa, Illinois, Nebraska, and South Dakota have been declared major disaster areas during June and July 1993.

Minnesota: Brown, Cottonwood, Lincoln, Lyon, Murray, Nobles, Pipestone, Redwood, Rock, Blue Earth, Nicollet, Renville, Sibley, Watonwan, Yellow Medicine, Carver, Chippewa, Faribault, Jackson, Le Sueur, Martin, McLeod, Scott, Goodhue, Washington, Dakota, Houston, Ramsey, Big Stone, Clay, Stevens, Swift, Traverse.

Wisconsin: Calumet, Clark, Columbia, Dunn, Eau Claire, Fond du Lac, Green Lake, Jackson, Marquette, Outagamie, Portage, Sauk, Trempealeau, Waupaca, Waushara, Winnebago, Wood, Adams, Buffalo, Chippewa, Crawford, Dane, Green, Grant, Iowa, Juneau, LaCrosse, Lafayette, Lincoln, Marathon, Pepin, Pierce, Price, Rock, Rusk, St. Croix, Vernon.

Missouri: Lewis, Lincoln, Marion, Pike, St. Charles, Andrew, Atchison, Barry, Bates, Boone, Buchanan, Callaway, Camden, Carroll, Cape Girardeau, Chariton, Clark, Clay, Cole, Cooper, Daviess, Franklin, Gasconade, Gentry, Harrison, Holt, Howard, Jackson, Jefferson, Lafayette, McDonald, Miller, Moniteau, Montgomery, Newton, Nodaway, Osage, Perry, Platte, Pulaski, Ralls, Ray, Saline, Shelby, St. Louis, St. Louis City, St. Genevieve, Stone, Warren, Worth.

Iowa: Clayton, Clinton, Des Moines, Dickinson, Humboldt, Jackson, Johnson, Louisa, Muscaine, Scott, Wapello, Polk, Lyon, Osceola, Emmet, Kossuth, Winnebago, Worth, Mitchell, Howard, Winneshiek, Allamakee, Fayette, Chickasaw, Floyd, Cerro Gordo, Hancock, Palo Alto, Clay, O'Brien, Sioux, Plymouth, Cherokee, Buena Vista, Pocahontas, Wright, Franklin, Butler, Bremer, Dubuque, Delaware, Buchanan, Black Hawk, Grundy, Hardin, Hamilton, Webster, Calhoun, Sac, Ida, Woodbury, Monora, Crawford, Carroll, Greene, Boone, Story, Marshall, Tama, Benton,

Linn, Jones, Cedar, Iowa, Poweshiek, Jasper, Dallas, Guthrie, Audubon, Shelby, Harrison, Pottawattamie, Cass, Adair, Madison, Warren, Marion, Mahaska, Keokuk, Washington, Henry, Jefferson, Monroe, Lacas, Clarke, Union, Adams, Montgomery, Mills, Fremont, Page, Taylor, Ringgold, Decatur, Wayne, Appanoosa, Davis, Van Buren, Lee.

Illinois: Adams, Calhoun, Carroll, Hancock, Henderson, Henry, Jersey, Jo Daviess, Mercer, Pike, Rock Island, Whiteside, Madison, Monroe, St. Clair, Boone, Lake, McHenry, Stephenson, Winnebago, Alexander, Jackson, Randolph, Union.

Nebraska: Buffalo, Cass, Lancaster, Sarpy, Seward, Washington, Adams, Hall, Kearney, Phelps.

South Dakota: Bon Homme, Brookings, Clay, Davison, Hanson, Hutchinson, Kinsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, Yankton.

Public Comment and Effective Date

The Administrative Procedures Act (APA), 5 U.S.C. 553, grants a specific exemption from its notice and public comment requirements for rulemakings when these requirements are contrary to the public interest (5 U.S.C. 553(b)(3)(B)). In the present case, the final rule amending Regulation Z provides a temporary exception and removes a restriction that otherwise may impair the availability of loan funds to consumers who encounter a bona fide personal financial emergency because their homes are located in an area devastated by flooding. The Board finds that it is in the public interest to provide this relief immediately and without advance notice and public comment. As explained above, the amendment to Regulation Z will reduce the paperwork burden on creditors extending credit in the disaster areas and aid in making credit speedily available to consumers in these areas. Consumers would continue to have the right to rescind certain loans unless they specifically waive that right. Moreover, the exception is limited in scope and duration. It will provide immediate assistance to consumers and lenders in their ongoing reconstruction and rehabilitation efforts in those areas that have been affected by recent major disasters recognized under the appropriate federal disaster relief statute.

The Board also believes that deferring the effective date in regard to the adoption of the final rule would be contrary to the public interest. The APA grants a specific exemption from its requirements relating to this item in such instances (12 U.S.C. 553(d)(3)). Accordingly, the amendments to Regulation Z are effective immediately.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board believes that the adoption of this final rule would not have a significant adverse impact on a substantial number of small entities. The amendment imposes no new requirements and temporarily removes a restriction imposed by Regulation Z on entities subject to the regulation.

Paperwork Reduction Act Analysis

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is contained in these changes.

List of Subjects in 12 CFR Part 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Truth in Lending.

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board is amending 12 CFR part 226 as follows. The Board is publishing only those sections of the regulation that are affected by the changes.

PART 226--TRUTH IN LENDING

1. The authority citation for part 226 continues to read:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and 1637(c)(5); sec. 1204 (c), Competitive Equality Banking Act, 12 U.S.C. 3806.

Subpart B--Open-End Credit

3. Section 226.15 paragraph (e) is revised to read as follows:

§226.15 Right of rescission.

* * * * *

(e) Consumer's waiver of right to rescind. (1) The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are

prohibited, except as provided in paragraph (e)(2) of this section. (2) The need of the consumer to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1993, pursuant to 42 U.S.C. 5170, to be a major disaster area because of severe storms and flooding in the Midwest. [FN36a] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

FN36a A list of the affected areas will be maintained by the Board.

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2. Section 226.16 is amended by redesignating existing footnotes 36a and 36b as footnotes 36b and 36c, respectively.

Subpart C--Closed-End Credit

4. Section 226.23 paragraph (e) is revised to read as follows:

§226.23 Right of Rescission.

* * * * *

(e) Consumer's waiver of right to rescind. (1) The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited, except as provided in paragraph (e)(2) of this section.

(2) The need of the consumer to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1993, pursuant to 42 U.S.C. 5170, to be a major disaster area because of severe storms and flooding in the Midwest. [FN48a] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

FN48a A list of the affected areas will be maintained by the Board.

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By order of the Board of Governors of the Federal Reserve System, July 23, 1993.

William W. Wiles,

Secretary of the Board.

(FR Doc. 93-18072 Filed 7-28-93; 8:45 am)

BILLING CODE 6210-01-P