[6210-01-M]

[Regulation Z]

TRUTH IN LENDING

Joint Notice of Statement of Enforcement Policy

AGENCIES: The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration.

ACTION: Statement of interagency enforcement policy—Regulation Z.

SUMMARY: This statement of enforcement policy sets forth uniform guidelines which the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration will use to enforce the Truth in Lending Act and Regulation Z. Specific, standardized guidelines will promote improved enforcement of the Truth in Lending through uniform corrective action, including reimbursement for borrowers who have been overcharged as a result of violations of the Act.

EFFECTIVE DATE: This statement shall become effective on January 4, 1979.

FOR FURTHER INFORMATION CONTACT:

Alan Dombrow, Office of the Comptroller of the Currency, 202-447-1600; Peter M. Kravitz, Federal Deposit Insurance Corporation, 202-389-4427; Harry W. Quillian, Federal Home Loan Bank Board, 202-377-6440; Margaret Stewart, Federal Reserve Board, 202-452-2412; Linda Cohen, National Credit Union Administration, 202-254-8760.

SUPPLEMENTARY INFORMATION: This document sets forth the principles that the federal regulatory agencies involved will use in enforcing the Truth in Lending Act and Regulation Z. Coordination among the agencies is desirable in order to bring about uniformity in the administrative actions that will be taken when violations of the Act are detected. To that end, the agencies have developed a set of policy guidelines for measuring and correcting the conditions resulting from certain violations of the Truth in Lending Act.

The guidelines which follow are intended to address those violations which result in overcharges to customers. It should be emphasized that it will continue to be the policy of the enforcing agencies that, whenver *any* violation of the Act is detected, prospective correction of the violation will be required—that is, creditors will be required to take whatever action is necessary to ensure that the violation does not recur. For example, a creditor using forms that do not comply with the type size requirements will be required to obtain new forms which do comply.

These guidelines are not intended to substitute for any other administrative authority that any of the agencies has to enforce the Act, nor do they foreclose the customer's right to bring a civil action where authorized by the Act. Further, where apparently willful and knowing violations are found, the agencies will notify the Department of Justice.

As new examination data concerning the extent and type of violations are received, the guidelines will be reviewed and revised as appropriate. They may be modified at the discretion of the agencies so as to be more responsive to specific or unique circumstances which may exist. The guidelines are also subject to revision where necessary to reflect changes in the Truth in Lending Act or Regulation Z.

The five participating agencies published a proposed statement of enforcement policy in October 1977. More than 300 comments, raising at least twenty different substantive and technical issues, were received. In the months following the close of the comment period in December 1977, the staffs of the participating agencies analyzed the comments and drafted several revised proposals in an effort to accommodate, to the extent possible, the concerns expressed in those comments, as well as the views of all the agencies. In September 1978, the Interagency Coordinating Committee, which is composed of senior representatives of the five agencies, agreed on a final draft and recommended its adoption. That action has now been taken by all the agencies involved.

Among the more significant aspects of the revised guidelines are the following:

1. The guidelines set forth a minimum standard for enforcement of the Truth in Lending Act. Each enforcing agency retains the option of taking alternative action where warranted and is in no way precluded from taking enforcement action for violations not covered by the guidelines.

2. The agencies will require reimbursement for violations discovered on outstanding loans consummated after October 28, 1974, and on terminated loans originated no more than two years prior to the date of examination in which the violation is discovered.

3. A creditor which understates the annual percentage rate will be required to adjust the cost of credit to assure that the customer pays no more than the disclosed annual percentage rate. A creditor understating the finance charge must reimburse customers for the difference between the actual and the disclosed finance charge. Where the creditor failed to disclose an annual percentage rate as required, the customer's cost of credit must be adjusted to the amount of the rate shown on the note or contract. Where the annual percentage rate is undisclosed and no rate is shown on the note or contract, the creditor will be required to reduce the actual annual percentage rate by one quarter of one percentage point in first lien mortgage transactions and by one percentage point in other transactions.

4. The guidelines provide a tolerance of one-eighth of one percentage point in disclosure of an annual percentage rate, meaning that an annual percentage rate which understates the true cost of credit will be subject to corrective action only if the understatement is greater than one-eighth of one percentage point. The guidelines also provide a tolerance for finance charge disclosures. If the disclosed finance charge understates the true finance charge by no more than $100 or 1% of the correct finance charge, whichever is lower, the understatement will not be subject to corrective action.

5. The agencies will require reimbursement for a violation resulting in an overcharge of $1.00 or more for an individual account. They may also require some form of corrective action for amounts under this level where the violations are part of a consistent pattern or are due to gross negligence or a willful violation of the Act.

6. Once the amount of the overcharge is determined to be above the tolerance levels for annual percentage rate and finance charge disclosures, and thus subject to reimbursement, the creditor will also be required to reimburse that portion of the overcharge representing the tolerance amount. The same principle will apply to the $1.00 minimum amount necessary to trigger reimbursement. Thus, these amounts will be included in computing the total required to be returned to the customer.

7. The creditor may, at its option, use either the lump sum method or the lump sum/payment reduction method as a method of reimbursement where overcharges are discovered. These methods are defined in the guidelines.

8. The agencies will not require reimbursement for violations involving disclosures of property insurance charges under § 226.4(a)(6) and the charges listed in § 226.4(b).

9. The agencies will require reimbursement for certain violations not involving disclosure of the finance

charge and the annual percentage rate. These violations are related to disclosure of late payment charges, prepayment penalties and the method of rebating unearned finance charges.

10. A customer whose transaction is subject to reimbursement must be told that the reimbursement is the result of the creditor's failure to properly disclose information required by the Truth in Lending Act.

11. Special rules apply when credit life insurance is excluded from the finance charge, but disclosure of the voluntary nature of the insurance was not made in accordance with the Act and regulation.

12. While the guidelines do not apply specifically to open end credit violations, the agencies intend such violations to be subject to the general policies set forth in these guidelines and reimbursement will be required in appropriate cases.

These guidelines are adopted pursuant to the enforcement authority contained in 15 U.S.C. 1607 and 12 U.S.C. 1818(b) in the cases of the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency, pursuant to 15 U.S.C. 1607 and 12 U.S.C. 1464(d)(2) and 1730(e) in the case of the Federal Home Loan Bank Board, and pursuant to 15 U.S.C. 1607 and 12 U.S.C. 1786(e)(1) in the case of the National Credit Union Administration.

In consideration of the foregoing, the following statement of enforcement policy is adopted:

STATEMENT OF ENFORCEMENT POLICY

DEFINITIONS

Other than as listed below, all definitions are those found in the Truth in Lending Act and Regulation Z (hereinafter referred to as the "Act").

1. "Lump sum method" means a method of reimbursement under which a cash payment equal to the total overcharge will be made to a customer.

2. "Lump sum/payment reduction method" means a method of reimbursement under which a cash payment which will fully compensate the customer for past overcharges will be returned to the customer and the remaining payment amounts on the loan will be reduced to eliminate future overcharges.

3. "Understated APR" means a disclosed annual percentage rate, increased by ⅛ of one percentage point, which is less than the annual percentage rate calculated in accordance with the Act without rounding.

4. "Understated finance charge" means disclosed finance charge which is less than the finance charge calculated in accordance with the Act by an amount greater than the lesser of: (i) $100, or (ii) 1% of the correct finance charge.

GENERAL POLICIES

1. *Rules of application.* (a) The prescribed policies and remedies are understood to represent the minimum standards to be used by the agencies in enforcing the Act. Each enforcing agency will retain authority to take appropriate alternative action consistent with the intent of these guidelines. This statement of policy will not preclude enforcement of provisions of the Act which are not covered herein.

(b) These guidelines specifically apply to violations in other than open-end transactions. Open-end credit violations will be treated on a case-by-case basis, subject to the general policies set forth in these guidelines.

(c) Where violations are discovered in loans purchased by the holding institution from another institution, the enforcing agency for the holder will refer the violations to the agency with jurisdiction over the originating institution.

2. *De minimis rule.* (a) Violations discovered which result in overcharges shall require corrective action in the form of reimbursement to individual accounts for each overcharge of one dollar or more.

(b) The agencies reserve the right to require reimbursement or other corrective action for violations that result in amounts below the de minimis amount when they are part of a consistent pattern or are due to gross negligence or a willfull violation of the Act.

3. *Period for which corrective action is required.* (a) Corrective action shall be required for all violations within the scope of these guidelines on outstanding loans consummated since October 28, 1974.

(b) Corrective action shall be required for all violations within the scope of these guidelines on terminated loans consummated within two years of the examination in which the violation was noted.

4. *Violations involving the improper disclosure of annual percentage rate (APR) or finance charge.* (a) Where there is an understated APR and the finance charge is either correct or not disclosed, the creditor shall take corrective action to ensure that the customer's true cost of credit does not exceed the disclosed APR. Where there is an understated finance charge and the APR is correct, the creditor shall reimburse the overcharge (the difference between the actual and the understated finance charge). If the disclosed APR and finance charge are both understated, the creditor shall take appropriate action to correct the larger overcharge.

(b) In cases where an APR was required to be disclosed but was omitted, the disclosed APR shall be considered to be:

(1) The contract rate, if such a rate was disclosed on the note or Truth in Lending disclosure statement, or

(2) If such contract rate was not disclosed, the actual APR, reduced by ¼ of 1 percentage point in the case of first lien mortgage transactions, and by 1 percentage point in all other transactions.

The creditor shall take corrective action to ensure that the customer's true cost of credit does not exceed the disclosed APR as defined in this paragraph.

5. *Methods of adjustment.* In the event a customer has been overcharged, the customer will be reimbursed using either the lump sum method or the lump sum/payment reduction method, at the discretion of the creditor.

6. *Violations involving the improper disclosure of credit life, accident, health or loss of income insurance.* (a) If the creditor has not disclosed to the customer in writing that credit life, accident, health or loss of income insurance is optional, the insurance shall be treated as having been required by the creditor and improperly excluded from the finance charge. The creditor shall take appropriate corrective action for the overcharge resulting from the understated finance charge or APR. The insurance will remain in effect.

(b) If the creditor has disclosed to the customer in writing that credit life, accident, health or loss of income insurance is optional but there is either no signed insurance option or no disclosure of the cost of the insurance, the creditor shall, unless a claim was made on the insurance policy and paid, be required to send a written notice to the affected customer disclosing the cost of the insurance and notifying the customer that the insurance is optional and that it may be cancelled within 45 days to obtain a full refund of all premiums charged. If the creditor receives no response within 45 days, the insurance will remain in effect and no further corrective action will be required.

(c) Omission of the date on the insurance option shall not be considered to result in an overcharge.

7. *Special disclosure violations.* (a) If a creditor has not included the premium for required property insurance as part of the finance charge, and has failed to make required disclosure under 12 CFR 226.4(a)(6), it shall not constitute an overcharge.

(b) If a creditor has not itemized and disclosed the charges found in 12 CFR § 226.4(b) and has not included them in the finance charge as required by that Section, the resulting disclosure

violation shall not constitute an overcharge.

8. *Non-finance charge violations.* (a) If a prepayment penalty or late payment charge in excess of that disclosed has been collected, the excess shall be reimbursed.

(b) (1) A creditor which gives a less favorable rebate of unearned finance charges than was disclosed must reimburse the difference between the disclosed and actual rebate amounts.

(2) Failure to rebate unearned finance charges results in an overcharge if the creditor has not disclosed that unearned finance charges will not be rebated. In such event, the creditor will be required to rebate unearned finance charges according to the method disclosed or, if none was disclosed, according to the method specified under State law. If no method was disclosed and State law is silent, the creditor shall rebate unearned finance charges pursuant to the actuarial method based on scheduled payments.

9. *Disclosure of reason for corrective action.* Whenever corrective action in the form of reimbursement is made to a customer, the creditor must inform the customer that the reimbursement is being made as a result of the creditor's failure to make disclosures required by the Truth in Lending Act.

10. *Reimbursement procedures.* Creditors are encouraged to make reimbursement voluntarily and are reminded that the Act absolves them of civil liability for unintentional violations corrected within 15 days of discovery of an error.

In the event a creditor refuses to make reimbursement as requested, the agency may issue an cease-and-desist order to require corrective action in accordance with procedures prescribed in its general enforcement authority.

Dated: December 26, 1978.

HENRY C. WALLICH,
Member, Board of Governors of the Federal Reserve System.

Dated: December 27, 1978.

JOHN G. HEIMANN,
Comptroller of the Currency.

Dated: December 27, 1978.

JOHN G. HEIMANN,
Acting Chairman, Federal Deposit Insurance Corporation.

Dated: December 27, 1978.

ROBERT H. MCKINNEY,
Chairman, Federal Home Loan Bank Board.

Dated: December 26, 1978.

LAWRENCE CONNELL, Jr.,
Administrator, National Credit Union Administration.

[FR Doc. 79-340 Filed 1-3-79; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on December 27, 1978. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before January 22, 1979, and should be addressed to Mr. John Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulator Reports Review Staff, 202-275-3532.

INTERSTATE COMMERCE COMMISSION

ICC requests an extension without change clearance of the Quarterly Report of Freight Loss and Damage Claims—Motor Carriers, Form QL&D-M, required to be filed by some 2280 motor carriers of property with an average operating revenue of $1 million or more, pursuant to Section 220 of the Interstate Commerce Act. Data are used for economic regulatory purposes. Reporting burden for carriers is estimated to average 36 hours per report. Reports are mandatory and available for use by the public.

ICC requests an extension without change clearance of Quarterly Report of Freight Loss and Damage Claims—Railroads, Form QL&D-R, required to be filed by some 42 Class I line-haul railroads, except switching and terminal companies, with an average operating revenue of $50 million or more, pursuant to Section 20 of the Interstate Commerce Act. This is a smaller number of carriers than previous due to revised revenue classifications. Data are used for economic regulatory purposes. Reporting burden for carriers is estimated to average 64 hours per report. Reports are mandatory and available for use by the public.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 79-320 Filed 1-3-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD-654; FDAA-568-DR]

KENTUCKY

Major Disaster and Related Determinations

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FDAA-568-DR), dated December 12, 1978, and related determinations.

DATED: December 12, 1978.

FOR FURTHER INFORMATION CONTACT:

A. C. Reid, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410 (202/634-7825).

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on December 12, 1978, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms and flooding beginning about December 7, 1978, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the Commonwealth of Kentucky.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Thomas P. Credle of the Federal Disaster Assistance Administration to act as the Federal Coordi-