assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the trustees.

(d) Any residual funds or property not required to defray the necessary expenses of liquidation shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the flower and plant research or information programs hitherto authorized.

§ 1290.183 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any regulation issued thereunder; or

(c) Affect or impair any right or remedies of the United States, or of any person, with respect to any such violation.

§ 1290.184 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by an organization certified pursuant to § 1290.176 or by any interested person affected by the provisions of the order, including the Secretary.

§ 1290.185 Personal liability

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member or employee, except for acts of dishonesty or willful misconduct.

§ 1290.186 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Copies of this notice of hearing may be obtained from the following parsons:

Laura Norden, Fruit and Vegetable Division, AMS, Room 2545–S, U.S. Department of Agriculture, Washington, D.C. 20250, or from "Marketing Field Office, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture" at any of the following locations:

William C. Knope, P.O. Box 9, Lakeland, Florida 33802;

David B. Fitz, 320 North Main Street, Room A–103, McAllen, Texas 78501;

Robert B. Case, New Customhouse, Room 365, 721 19th Street, Denver, Colorado 80202;

Roland G. Harris, 945 S. Figueroa Street, Suite 540, Los Angeles, California 90017;

Richard P. Van Diest, 1130 "O" Street, Room 3114, Fresno, California 93721;

William B. Blackburn, P.O. Box 255507, Sacramento, California 95825, or

Joseph C. Perrin, Boise-Cascade Building, Suite 805, 1600 S.W. 4th Avenue, Portland, Oregon 97201

(Title XVII of Pub. L. 97–98; 95 Stat; 7 U.S.C. 4301–4319)

Signed at Washington, D.C., on October 7, 1982.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 82–28121 Filed 10–8–82; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R–0413]

Truth in Lending; Treatment of Seller's Points

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Withdrawal of proposed rule and revisions to official staff commentary.

SUMMARY: The Board is withdrawing its proposal to amend Regulation Z (Truth in Lending) to require (1) seller's points to be included in the finance charge or (2) a disclosure that seller's points are involved in the transaction. The withdrawal is primarily a result of the comments received on the proposal, specifically the uncertainty concerning the extent to which seller's points are passed on to consumers and the consumer benefit of any action in this area, as well as the cost and disruption any action could impose.

EFFECTIVE DATE: September 29, 1982.

FOR FURTHER INFORMATION CONTACT: Gerald P. Hurst or Clarence B. Cain, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452–2412 or (202) 452–3667. The final regulatory flexibility analysis may be obtained by contacting Fred B. Ruckdeschel, Economist, Regulatory Improvement Project, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452–2579.

SUPPLEMENTARY INFORMATION: *General.* The Truth in Lending Act defines finance charges to include "all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit."[1] Under old Regulation Z, the Board took the position that if a lender imposed points on the seller and the points were in fact passed on to the buyer, the lender had to include them in the finance charge and in computing the annual percentage rate (APR) disclosed to the borrower.[2] The typical situation involved VA and FHA loans which allowed only one point to be passed on to the buyer; the remainder had to be paid by the seller. Some conventional transactions also involved points to be paid by the seller. Since it was difficult for a lender to determine whether a seller had increased the sales price—and, if so, by how much—lenders often made a presumption and either included the points in the finance charge or excluded them in all cases.

In revising Regulation Z (46 FR 20848, April 7, 1981) under the Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96–221, March 31, 1980), the Board sought to provide precise, simple rules as opposed to general statements that might create ambiguity, require additional regulatory clarification or generate litigation on technicalities. Applying this principle to the seller's points question, the Board decided to exclude them from the finance charge in all cases, even if they were passed along to buyers in a higher sales price.[3] This rule eliminated guess

[1] Section 106(a) of the Truth in Lending Act, 15 U.S.C. 1605.

[2] 12 CFR 226.406.

[3] Section 226.4(c)(5) of revised Regulation Z. Comment 4(c)(5)–1 of Official Staff Commentary, TIL–1, provides that the exclusion from the finance charge applies to "any charges imposed by the creditor upon the non-creditor seller of property for providing credit to the buyer or for providing credit on certain terms."

work for lenders trying to determine if some or all of the points had been added to the sales price. The change was also based on the belief that the purchaser would understand that the sales price might be adjusted if the lender imposed charges on the seller.

Recently, a concern has been raised that the treatment of seller's points may have created a disclosure "loophole." The effect of the seller's points rule may in some circumstances result in an increase in the purchase price of the product without disclosure of the fact that the increase is related to the seller's cost of obtaining the reduced rate financing for the customer. In recognition of this fact, the Board considered a number of proposed rule changes. Based upon its review of these proposals, the Board has determined that no revisions to Regulation Z are necessary at this time. (A copy of the Final Regulatory Flexibility Analysis is available upon request.)

Proposals published. On July 27, 1982, the Board published for comment proposed alternatives that would amend revised Regulation Z and the Official Staff Commentary to address the seller's points issue (47 FR 32433). The notice published in the **Federal Register** included five alternative actions that could be taken to deal with the seller's points issue. The alternatives can be summarized as follows:

Alternative One would have reversed the current seller's points position and *required creditors to include seller's points in the finance charge and APR to the extent they are passed on to consumers.* In addition, the rule would have allowed creditors to always include seller's points in the finance charge whether or not they were in fact passed on.

Alternative Two would have continued the exclusion of seller's points from the finance charge but would have *required a new disclosure concerning seller's points in disclosure statements and advertisements* for reduced rate financing transactions. The disclosure would be (1) that the seller has paid money to obtain the financing; (2) the amount paid; and (3) that the payment, to the extent it has been passed on to the consumer in the form of a higher sales price or other charge, results in a higher cost of credit than that actually disclosed.

Alternative Three (included as significant alternative (a) in the Initial Regulatory Flexibility Analysis (IRFA) in the notice) would have *required a statement in advertisements and on the disclosure statement that the contract price may reflect any points passed on without specifying the dollar amount.*

Alternative Four (included as significant alternative (b) in the IRFA) would have *required a statement such as that in Alternative Three only in advertisements* and not on the disclosure statement.

Alternative Five (included as significant alternative (c) in the IRFA) would *retain the current treatment of seller's points and not impose any new requirement dealing with seller's points.*

Comments received. In response to the Board's proposal, approximately 350 comments were received. Approximately 60 percent of the comments were from creditors or their attorneys or trade associations. The remaining comments were from consumers, Reserve Banks, realtors, state agencies, law firms, consumer groups, and a legal services program.

Slightly more than half of the commenters urged the Board to take no action whatsoever in this area. The commenters opposing the proposed changes presented three major arguments. First, they argued that the Board should not amend the regulation so soon after going through the simplification process, particularly when the change reverses a position that was part of the simplification effort and that was made after throughtful consideration was given to the matter. In addition, an amendment before the regulation's October 1 mandatory effective date would signal that the Board would continue to make technical amendments each time a problem arose. Second, commenters argued that the first and second proposed alternatives were plagued with difficulties and failed to address the issue in a reasonable manner. Of particular concern to many was the extreme difficulty in determining the amount of seller's points passed on and the costs that could be associated with a change. Third, several commenters questioned the fairness of imposing substantial burdens on creditors for a practice or problem that is controlled by another party (that is, the seller) over whom they have little, if any, control.

Alternative One was chosen by relatively few commenters; those who supported it felt that it was the most appropriate method to show the true cost of credit. Twice as many of the commenters supported Alternative Two, largely because it did not contain the inherent problem of Alternative One of determining the *amount* of points being passed on.

A small number of commenters supported Alternative Three, particularly citing as its advantage over Alternative Two that the dollar amount of the points would not be required in the disclosure. A number of commenters supported a disclosure in only advertisements as a means of addressing the seller's points issue (Alternative Four). They argued that this would be less disruptive and costly, as well as more useful to the consumer because the information is provided early in the shopping effort.

A substantial number of comments were received from consumers. Virtually all of the consumers urged the Board to take some action to require disclosure of all credit costs in a transaction, although very few of them specified a particular alternative. A couple of consumers urged the Board to take no action.

Although the Board recognizes that at times consumers may be misled as to the separate cost of financing when credit costs are paid indirectly through an increase in the purchase price of the property, it does not believe that any of the alternatives to the current regulation provides a satisfactory solution to the problem.

Alternative One. Alternative One, in effect, would stipulate two methods of determining which rates will satisfy the advertising and disclosure requirements of Regulation Z. One method requires estimating the proportion of the seller's points that is passed on to the consumer and thus is treated as a prepaid finance charge in the calculation of TIL disclosures. The other method permits the entire amount of points to be treated as a prepaid finance charge.

Under the shopping goal of Truth in Lending, disclosure of credit costs on a comparable basis provides two benefits. First, disclosure increases the efficiency with which consumers use advertising to search for options. Second, it increases the efficiency with which consumers compare options. The treatment of seller's points in new Regulation Z can adversely affect consumers' search for options when all or a large portion of seller's points are passed on in a higher price. The bought-down APR can be advertised but the inflated price need not be. Thus, consumers may be induced through advertisements to spend scarce shopping time and effort gaining further information about deals that, upon comparison, turn out to be more costly. Alternative One would help remedy this problem when all or a large portion of points are passed on.

However, when a seller does not pass on points by raising the price or passes on only a small portion, then advertising of annual percentage rates (APRs) under new Regulation Z shows that the seller is willing to reduce the total cost of a transaction through subsidized financing. Under Alternative One, when creditors assume, contrary to the fact, that seller's points are passed on, advertised APRs would not reflect the interest-rate subsidy. Thus, under these circumstances, Alternative One would reduce consumer's ability to use advertising to direct their search efforts.

In order to assess the ultimate impact on the search process, it is necessary to take into account (1) the extent to which sellers are likely to pass on points to consumers and (2) the impact that Alternative One is likely to have on the behavior of creditors.

Little information is available to the Board on the extent to which sellers have been able to pass on points to consumers. However, under current economic conditions, it appears that in many cases sellers will be unable to increase prices sufficiently to pass on a large portion of seller's points. Many commenters affirmed that it would be extremely difficult to determine the extent to which points are passed on, although some felt it was likely that points are passed on to some extent.

The impact of Alternative One on sellers' and creditors' behavior is likely to arise from possible increases in costs in three areas. First, there are the costs of training personnel to treat all or part of seller's points as a prepaid finance charge. Second, there are costs of estimating the cash prices necessary to determine what portion of those points have been passed on to buyers in higher prices.[4] Third, and potentially most important, there is the cost to sellers and creditors that takes the form of an increased risk of litigation brought against them by consumers who claim that the passed-on portion of seller's points was underestimated. As several commenters noted, many sellers and creditors are likely to avoid the second and third kinds of cost by including the full amount of the points in the finance charge or by overestimating the portion of points passed on, whenever the cash price is not obvious. To the extent costs in these areas are incurred, creditors can be expected to attempt to recover them through higher interest charges.

When seller's points are not passed on entirely and creditors choose to avoid the cost of estimating the amount of seller's points passed on and the risk of litigation, consumers may be misled in their search activities under Alternative One. Advertised APRs for subsidized financing would be as high as market interest rates. As a result, this alternative may impair consumers' ability to identify lower cost alternatives by comparing advertisements.

Following their search effort consumers will attempt to choose the best combination of product and financing. The terms of the sales contract and the new Regulation Z disclosures provide a good deal of information for consumers to make informed financial decisions. The total cost of each possible transaction is fully reflected either by the price and bought-down APR or the downpayment and monthly payments (assuming contract maturity and downpayment percentage are constants). However, when seller's points are treated as a prepaid finance charge under Alternative One, a reduction in price is implied. But without knowing the implied price, the consumer will see the points double counted. That is, the points will be reflected in both the disclosed APR and in the contract price. As a result, consumers who rely on the proposed disclosure would overestimate the total cost of the transaction.

In summary, Alternative One would require APRs and finance charges to be restated to reflect the amount of seller's points passed on. When seller's points are largely or completely passed on, Alternative One could prevent consumers from being misled by advertisements during their initial search for attractive combinations of product and financing arrangements. But when seller's points are not passed on, as perhaps during times of economic distress, then the impact of Alternative One, through advertising, on consumers' search efforts depends on whether creditors and sellers choose to estimate the amount of points passed on or choose to treat the entire amount of points as a prepaid finance charge. If they try to determine the amount of points passed on, they would incur additional costs which would be borne indirectly by the consumer. If they treat the entire amount as a prepaid finance charge, as some commenters suggested they would, the APRs for subsidized financing would appear the same as those for unsubsidized financing. Consequently, consumers might have greater difficulty in searching for deals with subsidized financing.

Alternative Two. The warning statement required by Alternative Two would tell consumers the dollar amount of seller's points paid to the creditor and that the cost of credit is higher than that disclosed to the extent that points have been passed on to the buyer. The presence of a warning might induce consumers to devote greater attention to all details of reduced-rate financing plans. However, disclosure of the dollar amount of points would not give consumers adequate information to determine *whether* the seller has subsidized the financing or has passed on the points in the product price. In order to obtain this information, the consumer would have to compare various packages of price and annual percentage rate, which is the same task that the consumer would perform when directly evaluating the costs of alternative product and financing combinations. Moreover, the disclosure would introduce further complexity to Truth in Lending disclosures and could lead consumers to doubt the usefulness of the present TIL disclosures.

As many commenters noted, Alternative Two would impose some additional paperwork burdens on sellers and creditors. Sellers would have to adjust advertising copy to reflect the required statement. Creditors' forms also would have to be reprinted or overprinted with the statement about the seller's payment.

In summary, Alternative Two would alert consumers that the below-market financing cost might be accompanied by a correspondingly higher product price. This lack of definitiveness may lead consumers to question the value of the existing TIL disclosures, even when correct.

Alternative Three. Alternative Three is a modification of Alternative Two. This proposal would inform consumers that the seller has paid seller's points, but would not require disclosure of the dollar amount of points passed on to the consumer by the seller. It may induce consumers to devote greater attention to the details of reduced-rate financing plans.

Alternative Three is consistent with the views of many commenters on the problems associated with disclosure of the dollar amount of points. These commenters noted that accurate disclosure of the dollar amount of points paid would be difficult, particularly if it were required in advertisements. They noted that the amount of points is often determined quite late in the transaction when the loan amount and other information become known. For example, in some cases the amount of points paid by a home builder on a particular unit may be a function of the overall number of units sold in a project that use the reduced-rate financing. This type of agreement between the seller and creditor would make it virtually impossible to disclose the exact amount of points paid by customers who purchased in the early stages of a development.

Alternative Three is similar to Alternative Two in that both would require a statement as part of the Truth in Lending disclosures. Commenters

[4] Included here would be the cost to creditors of monitoring the extent to which negotiations between sellers and buyers have changed the characteristics of the houses being sold. For example, negotiated changes in landscaping, appointments, and other details, as well as settlement dates could affect the hypothetical cash price that the creditor must estimate.

noted that this requirement would impose additional training and paperwork costs. An objection to Alternatives Two and Three raised by commenters is that the required statement in Truth in Lending disclosures would normally come after the consumers have examined various product choices and made their final purchase decision. They argue that the disclosure at that point is unlikely to be useful to the consumer.

Alternative Four. Alternative Four would require sellers to disclose in advertising that seller's points have been paid and that they may be included in the purchase price. The objectives of this warning are to encourage consumers to consider both the annual percentage rate and purchase price in comparing alternatives and to aid consumers in deciding whether or not to seek additional information from particular creditors.

Alternative Four has several weaknesses. First, the warning directs consumers' attention to one of the costs incurred by the seller. The warning does not directly advise consumers to consider the purchse price and annual percentage rate; consumers would have to infer such advice from the warning.

Second, the warning informs consumers of the possibility that seller's points were passed on in product price; it does not indicate *whether* points have actually passed on. The warning would not enable consumers seeing advertisements for reduced-rate financing to distinguish between packages where points are passed on and packages with subsidized financing. Consumers would have to canvass sellers to obtain the product price and credit term information necessary to identify packages where points are passed on.

The costs of complying with Alternative Four would be lower than the costs associated with either Alternative One, Two or Three. However, in the Board's judgment, the costs incurred by advertisers covered under Alternative Four would outweigh the problematic benefits associated with this proposed modification to the regulation.

In conclusion, the Board has determined that no revisions to Regulation Z should be made at this time.

List of Subjects in 12 CFR Part 226

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

By order of the Board of Governors of the Federal Reserve System, October 5, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-27834 Filed 10-8-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Docket No. 14322; Notice No. 75-9E]

Operations Review Program Completion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice announcing completion of a Regulatory Review Program.

SUMMARY: With this notice, the FAA completes the Operations Review Program initiated in February of 1975. The purpose of this review was to update and improve: (1) Maintenance rules; (2) airmen certification rules; (3) selected air traffic and general operating rules; (4) rules for the certification and operations of air carriers, air travel clubs and operators for compensation or hire; and (5) rules for schools and other certificated agencies. This notice also announces the disposition of those Operations Review proposals which are not being addressed in the Operations Review Rulemaking.

FOR FURTHER INFORMATION CONTACT: Ida M. Cronauer, Regulatory Review Branch, ASF-410, Safety Regulations Division, Office of Aviation Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone (202) 755-8714.

SUPPLEMENTARY INFORMATION: In recognition of the rapid growth and technological advances within the aviation industry of the United States and other countries, the FAA conducted an Operations Review Program. The FAA invited all interested persons to submit proposals to change the Federal Aviation Regulations involved for consideration as part of the regulatory process (see Notice 75-9, 40 FR 8685; February 28, 1975). In the notice, the FAA announced that it would make available for comment a Compilation of Proposals to be given further consideration as possible agenda items for an Operations Review Conference. The FAA announced availability of the Compilation of Proposals and invited all interested persons to submit comments on the proposals (Notice 75-9A, 40 FR 24041; June 4, 1975). In response to that invitation, over 5,000 proposed changes, contained in 123 submissions, were received by the FAA. An Operations Review Conference was held by the FAA December 1-5, 1975, in Washington, D.C. to obtain the views of those concerned on identified proposals from both the aviation community and the agency.

Notices of Proposed Rulemaking Issued

The proposals and related conference discussions culminated in 12 notices of proposed rulemaking:

Notice No. and Title and Federal Register (FR) Citation

75-38—Rotorcraft External-Load Operations (40 FR 54188; November 20,1975)
75-39—Clarifying and Editorial Changes (40 FR 57342; December 8, 1975)
76-20—Airspace, Air Traffic and General Operationg Rules (41 FR 46875; October 26, 1976)
76-28—Miscellaneous Proposals (41 FR 56280; December 27, 1976)
77-12—Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft (42 FR 37417; July 21 1977)
77-20—General Operating and Flight Rules and Related Airworthiness Standards (42 FR 44204; September 1, 1977)
78-3—flight Crewmembr Flight and Duty Time Limitations and Rest Requirements (43 FR 8070; February 27, 1978)
78-7—Certification and Operations: Domestic, Flag and Supplemental Air Carriers and Commercial Operators of Large Aircraft Certification and Operations of Scheduled Air Carriers With Helicopters (43 FR 20448; May 11, 1978)
78-11—Operations Review Program Notice No. 9 (43 FR 36464; August 17, 1978)
78-12—Airworthiness, Equipment, Certification, and Operating Proposals (43 FR 37958; August 24, 1978)
80-22—Operations Review Program Notice No. 12 (45 FR 76894; November 20, 1980)
81-1—Operations Review Program Notice No. 11 (46 FR 5484; January 19,1981)

Amendments Issued

Based on the comments received in response to the notices listed above and further review within the FAA, the following amendments were issued as part of this Operations Review Program:

Amendment No. and Title and Federal Register (FR) Citation

1—Clarifying and Editorial Changes (41 Fr 47227; October 28, 1976)
2—Rotorcraft External-Load Operations (42 FR 24196; May 12, 1977 and 42 FR 32531; June 27, 1977)
2A—Special Federal Aviation Regulation No. 36, Development of Major Repair Data (43 FR 3084; January 23, 1978)
3—Airspace, Air Traffic, and General Operating Rules (44 FR 15654; March 15, 1979)