state law, an institution must act more quickly to either resolve the error or provisionally recredit the consumer's account. Another more protective feature of the state law is that it provides additional rules for debits initiated by a third party through an automated clearing house. These rules, in general, may require the financial institution to take investigative measures greater that those specified by § 205.11(d).

(4) *Preemption determination.* In light of the analysis used for preemption determination, the Board has determined that, despite the remaining inconsistencies, the state law on electronic fund transfers on the whole is now more protective of the consumer and is not preempted.

List of Subjects in 12 CFR Part 205

Banks—banking, Consumer protection, Electronic funds transfer, Penalties.

Board of Governors of the Federal Reserve System, September 20, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-26091 Filed 9-23-83; 8:45 am]

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12 CFR Part 226

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

Truth in Lending; Determinations of Effect on Mississippi, New Jersey, Oklahoma, and South Carolina State Laws

AGENCY: Federal Reserve System.

ACTION: Preemption determinations.

SUMMARY: The Board is publishing in final form determinations as to whether certain state laws are inconsistent with the Truth in Lending Act (relating to the disclosure of information in connection with consumer credit transactions) or Federal Reserve Board Regulation Z (12 CFR Part 226) implementing the law, and therefore preempted. The laws of four states, Mississippi, New Jersey, Oklahoma, and South Carolina, are the subject of the requests. The Board has determined that, under certain circumstances, provisions in the laws of Mississippi and South Carolina are preempted. Effective October 1, 1984, creditors in Mississippi and South Carolina are prohibited from using the disclosures under those circumstances, but may begin complying with the determinations immediately.

EFFECTIVE DATE: October 1, 1984, with compliance optional before that date.

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.

SUPPLEMENTARY INFORMATION: (1) *General.* 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 laws relating to the disclosure of information in connection with consumer credit transactions. 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, and creditors in that state may not make disclosures using the inconsistent term or form. A determination on provisions in the law of one state has no effect on the validity of similar povisions in other states.

These final 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)).

Preemption determinations have an effective date of the October 1 that follows the determination by at least 6 months, as required by § 105(d) of the act. These determinations, as a result, have an effective date of October 1, 1984, although creditors may begin complying with the determinations before that time.

(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 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.

Preemption determinations are generally limited to those provisions of state law identified in the request for a determination and this is the case in the current determinations. At the Board's discretion, however, other state provisions that may be affected by the federal law may also be addressed.

(3) *Discussion of specific requests and final determinations.* In response to four requests, the Board reviewed provisions of certain laws in Mississippi, New Jersey, Oklahoma, and South Carolina. Proposed determinations were published for comment on May 9, 1983 (48 FR 20724). In the proposal the Board proposed not to preempt the provisions reviewed in the states of New Jersey, Oklahoma, and South Carolina and to preempt, under certain circumstances, the provision in the Mississippi law. The Board received 12 comments on the proposal. The majority of the comments focused on the proposal concerning South Carolina.

The final determinations regarding the state laws at issue, together with the reasons for the Board's action, are set forth below.

Mississippi. An attorney representing a financial institution requested a determination of whether a provision of the Mississippi Motor Vehicle Sales Finance Law is preempted by the federal act and regulation. Section 63-19-31(2)(g) of that statute requires that a buyer receive a copy of the retail installment contract disclosing, among other information, the amount of the finance charge. Section 75-17-1(9) of Mississippi law defines "finance charge" as:

> * * * the amount or rate paid or payable, directly or indirectly, by a debtor * * * incident to or as a condition of the extension of credit * * * provided, however, that * * * insurance premiums * * * shall not be included in the finance charge * * *.

In contrast, §§ 106 and 226.4 of the federal act and regulation, respectively,

define "finance charge" to include certain insurance premiums in all cases, and exclude others only if specified conditions are met by the creditor. Because of its treatment of insurance premiums, Mississippi law may, in certain transactions, require the disclosure of a finance charge, using that term, which differs in amount from the finance charge calculated and disclosed under federal law for the same transactions. Thus, the Board has determined that Section 63–19–31(g) of the Mississippi Motor Vehicle Sales Finance Law is preempted in those cases in which the term "finance charge" would be used under state law to describe a different amount than the finance charge disclosed under federal law. Under those circumstances, making that disclosure, even on a separate document from the federal disclosures, would not be permissible.

New Jersey. An attorney 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 has determined 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.

Oklahoma. The state of Oklahoma requested a determination that the credit disclosures required by the Oklahoma Pawn Shop Act (59 Oklahoma Statutes §§ 1501 to 1513) are not preempted by the federal Truth in Lending Act. (Although certain transactions in Oklahoma are exempt from chapter 2 of the Truth in Lending Act, that exemption does not extend to pawnshop transactions.) Specifically, the state sought a determination that the following required Oklahoma disclosures are not preempted by the federal law:

- The requirement that the pawnbroker-creditor disclose the "total of payments" even though a pawn transaction involves a single payment. (Rules of the Administrator § 150.5(g)).
- The requirement that the pawnbroker-creditor disclose the "name and address of the customer and the customer's description or the distinctive number from [the] customer's driver's license or military identification." (Rules of the Administrator § 150.5(k)).
- The requirement that the following be disclosed: "A statement to the effect that the customer is not obligated to redeem the pledged goods, and that the pledged goods may be forfeited to the pawnbroker thirty (30) days after the specified maturity date, provided that the pledged goods may be redeemed by the customer within thirty (30) days following the maturity date of the pawn transaction by payment of the orignally agreed redemption price and the payment of an additional pawn finance charge equal to one-thirtieth (1/30) of the original monthly pawn finance charge for each day following the original maturity date including the day on which the pledged goods are finally redeemed." (Rules of the Administrator § 150.5(n)).
- The requirement that a renewal of the pawn transaction with no change in the original terms be treated as a refinancing requiring full new disclosures. (Rules of the Administrator § 150.6).

Since footnote 44 of Regulation Z allows creditors to disclose the "total of payments" in single payment obligations at their discretion, a state requirement making the "total of payments" disclosure mandatory in a single payment transaction does not interfere with the federal scheme and, therefore, is not preempted. In connection with this disclosure, the Board notes that the finance charge, which is reflected in the total of payments, is defined in the Oklahoma Rules in a more abbreviated manner than in § 226.4 of Regulation Z. For example, the enumerated types of finance charges in § 226.4(b) (2) through (9) are not reflected in the state finance charge definition. It appears, however, that the finance charge computed under state law is always identical to the federal finance charge because Oklahoma pawnshop creditors may not impose any of the charges listed in § 226.4(b) (2) through (9). On this basis, the Board has determined that the state disclosures of the finance charge and total of payments do not contradict federal law and therefore are not preempted.

The customer identification requirement (§ 150.5(k)) and the forfeiture clause disclosure requirement (§ 150.5(n)) of the Oklahoma Rules are unrelated to any required federal disclosure. Under § 150.4 of the Oklahoma Rules, both of these disclosures must appear separate from the other required disclosures. Because these provisions merely provide additional information and do not contradict any federal disclosure, the Board has determined that the customer identification and the forfeiture-clause requirement are not prempted by the federal law.

The Oklahoma Rules (§ 150.6) define "refinancing" in much the same manner as § 226.20(a) of Regulation Z in that a refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer. It appears, however, that, as a matter of state law, Oklahoma provides that a renewal or consolidation of a pawn transaction must be treated as a new transaction requiring full redisclosure. This may result in pawn shop creditors having to give new disclosures where not required to do so by federal law. The Board has determined that the state requirement does not interfere with the federal scheme and is, therefore, not preempted since such additional information is not prohibited by the federal law.

South Carolina. A bank requested a determination of whether a provision of South Carolina law is inconsistent with and therefore preempted by the Truth in Lending Act. Under § 37–10–102(c) of the South Carolina Code Annotated, a consumer loan secured by real estate must be accompanied by a notice of any due-on-sale clause contained in the loan documents. Where the creditor is authorized to accelerate the note in the event of a transfer of the property, the law provides that:

> * * * the creditor shall include in all disclosure statements required by the Federal Truth in Lending Act to be provided to the debtor the following statement, which shall be either in capital letters or underlined: 'Assumption Notice—The debt secured hereby is subject to call in full or the terms thereof being modified in the event the real estate securing the debt is sold, conveyed or otherwise transferred.'

The required disclosure is somewhat similar to the statement of the creditor's assumption policy required in residential mortgage transactions by § 226.18(q) of Regulation Z. It differs from the federal provision, however, in

that it calls for a more detailed statement than is contemplated by the federal law and may be required in transactions other than residential mortgage transactions.

On its face, the South Carolina law appears to require the inclusion of a nonfederal disclosure within the federal Truth in Lending disclosure statement, in violation of § 226.17(a) of Regulation Z, which requires that all federal disclosures be segregated from other material.

When the Board published the South Carolina preemption request in May, it appeared that the inconsistency between the state and federal laws could be remedied by the state administrator through an official interpretation providing that the notice appear on the contract apart from the segregated federal disclosures. On that basis, the Board concluded that the state required assumption notice would not be inconsistent with federal law and, therefore not preempted since the notice would not be placed in the segregated federal disclosures. Commenters addressing the proposed determination, however, questioned that conclusion, pointing out that the state statute, on its face, requires that the notice be placed with the federal disclosure statement. The commenters also suggested that since the administrative interpretation would merely permit and not require the state notice to be outside the federal disclosure statement, the interpretation does not eliminate the inconsistency between the state and federal law.

After considertion of those comments and further analysis, the Board has determined that § 37-10-102(c) of the South Carolina Code Annotated is in fact preempted, but only to the extent that the law may be interpreted to require the state assumption notice to appear within the segregated federal disclosures. This determination does not preclude disclosure of the assumption notice on the loan contract apart from the segregated federal disclosures nor does it affect the validity of any state/agency interpretation permitting such action.

List of Subjects in 12 CFR Part 226

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

(4) *Preemption determinations.* The following order sets forth the preemption determinations, which will also be reflected in the Official Staff Commentary on Regulation Z (Supplement I to Part 226).

Order

Pursuant to section 111 of the Federal Truth in Lending Act as revised on March 31, 1980 (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. 96-221), the Board has determined that certain laws in the states of Missisippi and South Carolina are inconsistent with and preempted by the federal law. These determinations are as follows:

Preemption determination—Mississippi. Effective October 1, 1984, the Board has determined that the following provision in the state law of Mississippi is preempted by the federal law:

Section 63-19-32(2)(g) of the Motor Vehicle Sales Finance Law—Disclosure of finance charge. This provision is preempted in those cases in which the term "finance charge" would be used under state law to describe a different amount than the finance charge disclosed under federal law.

Preemption determination—South Carolina. Effective October 1, 1984, the Board has determined that the following provision in the state law of South Carolina is preempted by the federal law:

Section 37-20-102(c) of the South Carolina Code Annotated—Disclosure of due-on-sale clause. This provision is preempted, but only to the extent that the creditor is required to include the disclosure with the segregated federal disclosures. If the creditor may comply with the state law by placing the due-on-sale notice apart from the federal disclosures, the state law is not preempted.

Board of Governors of the Federal Reserve System, September 20, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-26094 Filed 9-23-83; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34-20197]

Annual Assessment Form for SECO Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form.

SUMMARY: The Securities Exchange Act of 1934 authorizes the Commission to collect reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed with respect to broker-dealers who are not members of a registered securities association. This form sets forth the annual schedule under which such broker-dealers are to be assessed for fiscal year 1983.

EFFECTIVE DATE: Adoption of the SECO-4-83 Form ("Form") is effective September 25, 1983. The Form is required to be filed on or before October 31, 1983.

FOR FURTHER INFORMATION CONTACT: Katherine England, Esq., (202) 272-2411, Attorney-Adviser, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today that it has adopted Form SECO-4-83 which sets forth the Commission's fiscal year 1983 annual assessment for registered broker-dealers who were not members of a registered securities association ("nonmember" or "SECO broker-dealers") for all or part of the time period from October 1, 1982 to September 30, 1983.

Rule 15b9-2 under the Securities Exchange Act of 1934 ("Act") requires that nonmember broker-dealers file a Form SECO-4 each fiscal year and pay the assessment specified. [1] In addition, this rule provides that, unless the Commission takes action to change them, the levels or rates of fees and assessments imposed on SECO broker-dealers will be set each year at levels or rates which are comparable to the corresponding fees and assessments imposed by the National Association of Securities Dealers, Inc. ("NASD") on its members. Accordingly, in adopting Form SECO-4-83, the Commission has determined to maintain the basic membership fee of $300 and the $5 fee for each associated person. In addition, the Commission will maintain the gross municipal securities income assessment at .21% and the gross securities income assessment (exclusive of income derived from municipal securities business) at .25%.

It also should be noted that legislation was enacted on June 6, 1983, which provides for the elimination of the SECO Program as of December 6, 1983. [2] At that time, all SECO broker-dealers are required to be members of a registered securities association or refrain from transacting an over-the-counter securities business. [3] In this regard,

[1] 17 CFR 240.15b9-2.

[2] Pub. L. No. 98-38 (June 6, 1983), 97 Stat. 205.

[3] In addition, the Commission is considering adopting a rule exempting certain broker-dealers

Continued