

with the federal law and is not more protective than the federal, the state law is preempted even if the Board has not issued a determination on the question. (§ 205.12(a) and (b))

By order of the Board of Governors of the Federal Reserve System, January 12, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-1299 Filed 1-17-84; 8:45 am]

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## 12 CFR Part 226

[Reg. Z; Doc. No. R-0501]

### Truth in Lending; Credit Cards; Issuance and Liability

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is publishing for comment a proposed amendment to revised Regulation Z (Truth in Lending). The proposal would clarify that credit cards issued for use with transactions that are exempt from all other provisions of the regulation are subject to the Regulation Z provisions governing the issuance of credit cards and the liability for unauthorized use. Questions concerning the applicability of these two credit card provisions have come from both the public and private sectors. The proposed amendment would resolve any remaining uncertainty that the issuance and liability protections apply to all credit cards regardless of use or cardholder status.

**DATE:** Comments must be received on or before February 24, 1984.

**ADDRESS:** Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to the C Street entrance 20th and C Streets, N.W., Washington, D.C. between 8:45 a.m. and 5:15 p.m. To aid in their consideration, comments should include a reference to Doc. No. R-0501. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

**FOR FURTHER INFORMATION CONTACT:** Regarding the regulation: Ruth R. Amberg, Senior Attorney, or Lynn C. Goldfaden or Richard Garabedian, Staff Attorneys, in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 2051, at (202) 452-3667 or (202) 452-3867. Regarding the economic impact analysis: Robert Kurtz, Economist, Division of Research and Statistics, Board of Governors of the

Federal Reserve System, Washington, D.C. 20551, at (202) 452-2915.

**SUPPLEMENTARY INFORMATION:** (1) *General.* Section 226.3 of Regulation Z would be amended to make clear that the restriction on unsolicited issuance of credit cards in § 226.12(a) and the provision in § 226.12(b) limiting a cardholder's liability for unauthorized use of a credit card to a maximum of \$50 (both based on the 1970 credit card amendments to the Truth in Lending Act) apply to credit cards issued for use in transactions that are exempt from other sections of the regulation. Questions concerning the applicability of these two credit card provisions have come from both the public and private sectors. The proposed amendment would resolve any remaining uncertainty that the issuance and liability protections apply to all credit cards, regardless of use or cardholder status. The proposed amendment would not affect the application of the exemptions to the other provisions of the regulation, such as the cost disclosure, rescission, and advertising requirements.

The comment period ends on February 24. Comments must be received on or before that date to ensure consideration. The Board believes a prompt resolution of these matters is essential and in the public interest in order to provide clarification on the scope of the credit card protections.

(2) *Scope.* The Regulation Z exemptions most likely to be affected are those for (1) credit extended by registered broker-dealers for the purchase of securities or commodities, (2) extensions of credit for more than \$25,000 (if unsecured by real estate or by the consumer's dwelling), and (3) credit extended by a regulated public utility for utility services, including credit extended by telephone companies. Business credit transactions also are generally exempt from the regulation; however, the regulation presently makes clear that the credit card provisions on unsolicited issuance and liability for unauthorized use apply to cards issued for obtaining business-purpose credit. Although the types of exempt transactions most commonly made with credit cards are business transactions, telephone calls, and securities purchases, the proposed amendment would make clear that *all* credit cards are covered by the provisions on issuance and liability for unauthorized use, so that the amendment also would affect credit cards issued for use with other types of transactions that are exempt under Regulation Z. (The

regulation also exempts certain student loans and home fuel budget plans.)

The vast majority of the credit cards that will be affected by this amendment are telephone calling cards. Other than those used in consumer asset management accounts, there appear to be comparatively few cards issued for use with fixed credit lines over \$25,000 that are not secured by real estate or a dwelling. Moreover, if the Board adopts the proposed amendment to cover all debit card transactions involving electronics under Regulations E (published elsewhere in this Federal Register issue), that regulation will govern the issuance and liability for unauthorized use of the majority of cards in consumer asset management accounts. (See the rule in § 226.12(f) of Regulation Z that designates which regulation applies when a transaction involves both an asset account and a credit extension.) Furthermore, many of the cards in consumer asset management accounts in which credit may be extended without first accessing an asset account are already covered by Regulation Z because they can be used to obtain non-exempt credit. For these reasons, this discussion will focus on telephone credit cards.

(3) *Telephone credit cards.* Questions regarding the applicability of the credit card amendments to telephone cards have become important primarily because of the millions of telephone credit cards that have been issued in recent years; the fact that many paper telephone cards are being replaced by plastic cards which resemble and function much like retail credit cards; and the structural changes in the telecommunications industry that even further expand the number of companies likely to issue cards. Although the Board understands that the current policies of the major telephone card issuers comply with the spirit of the credit card provisions, the proposed amendment would assure that these protections continue in the future.

The Board is concerned that, unless the credit card provisions apply to these cards, consumers who use credit cards in connection with credit programs involving exempt transactions will not have any federal protections restricting unsolicited issuance of such cards and limiting their liability for the unauthorized use of the card. Although there is no evidence of a pattern of abuse at this time, this lack of legal protection may have a serious impact in the future in light of the scope of these programs and the indications of their continued growth.

Approximately 47 million telephone cards have been issued, with most of them having been issued by a few of the 1,600 telephone companies. The use of cards is being encouraged as the companies seek to eliminate the substantial fraud losses and other costs associated with operator-assisted calls billed to third parties, as well as to provide consumers with easier access to telephone services. Presently, the major card issuers only issue cards upon request, and follow a policy of not imposing liability on a consumer for unauthorized charges made on a card. However, unless the credit card protections in Truth in Lending apply to these cards, it is unknown what policies will be set by these companies in the future. It is possible that the companies will reverse their past policies and seek to impose some liability on the cardholder whose card is used for unauthorized calls. The Board is not aware of any other laws specifically providing protections regarding unauthorized telephone card charges, and welcomes additional information on the subject.

Unsolicited issuance of cards presents the risk that a card may be stolen before it reaches the consumer. Since the consumer would not be expecting the card, the first sign of the theft could be a bill for unauthorized charges. Because the card contains all of the information necessary for immediate use, nothing insulates the consumer from unauthorized charges being made with the card. Although the Board has expressed concern in the past that restrictions on unsolicited issuance of typical retail credit cards might inhibit competition, it believes that the potential risk of unsolicited issuance of these cards outweighs any benefits of enhanced competition, as the cards may be used easily by anyone who has possession of them. Unlike the typical credit card, there is no face-to-face contact when the card is used, and no unique identifier of the cardholder, such as a secret personal identification number, or a signature to compare.

The Board also believes that since credit cards used by businesses and for business purposes are subject to the protections, it seems reasonable to conclude that credit cards used by consumers for personal credit transactions should be subject to the same protections. Consumers who use telephone cards, for example, are in no better position to protect themselves from the risks arising from unsolicited issuance and unauthorized use of these cards than with other credit cards. Further, the policy underlying the public

utilities exemption—that is, that other regulatory bodies would provide the needed protections on rates—does not appear to exist when the question concerns credit card issuance and liability for unauthorized use.

(4) *Particular issues for comment.* Although the vast majority of the existing telephone credit cards are issued by a relatively few large entities, there are many small companies in the industry that are or may become involved in card issuance. Therefore, the Board solicits comment on the potential impact of the amendment on small companies in the telecommunications or other potentially affected industries that currently have credit card programs, or that might develop them in the future.

The Board also solicits comment on other regulatory, operational, or cost factors that might be relevant to the proposal.

If the amendment is adopted, the Board will consider appropriate action to minimize initial compliance costs associated with the amendment. For example, the Board recognizes that some outstanding cards or agreements may contain language that is inconsistent with the liability limitation rules. (Some cards may reflect, for instance, that the cardholder is responsible for all charges made with the card.) Therefore, the Board solicits comment on whether it should stipulate that card issuers need not replace existing cards or agreements merely to change misleading language; rather, as new cards are issued or new agreements printed according to the normal replacement schedule, the inconsistent language would have to be modified to accurately reflect the limits. The limited liability protection would, of course, be effective notwithstanding the conflicting language. Such an accommodation would avoid costly expenditures for mass issuance of replacement cards or agreements, and yet effectuate the goals of the amendment because consumers would have the benefits of the liability protection.

Furthermore, the Board is aware that American Telephone & Telegraph (AT&T)—as part of its plan to automate telephone use—is in the process of issuing, without request, a substitute card to all consumers who have either an existing Bell System card or a card issued by an independent company that can be used for service over AT&T facilities. While this distribution will probably be substantially complete before the effective date of the proposed amendment, the issuance of cards after that date may raise questions of unsolicited issuance because AT&T

cannot void the existing credit cards when it issues the new cards. However, because of the unique circumstances involved, and the time, cost, and effort already devoted by AT&T to the project of automating card use the Board solicits comment on waiving the unsolicited issuance prohibition if there are any cards that have not yet been issued as part of this one-time substitution by the effective date of this amendment.

(5) *Economic Impact Analysis.* The Board's Division of Research and Statistics has prepared an economic impact analysis. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3245.

#### List of Subjects in 12 CFR Part 226

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

(6) *Text of proposed revision.* Pursuant to the authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend Regulation Z, 12 CFR Part 226, by removing footnote 4 to § 226.3(a) and adding a new footnote 4 to § 226.3 to read as follows:

"The provisions governing the issuance of credit cards and the liability for their unauthorized use in § 226.12 (a) and (b) apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.

#### § 226.3 Exempt transactions.

This regulation does not apply to the following: \* \* \*

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, January 12 1984.

William W. Wiles,

Secretary of the Board.

[FR D-120-120 Filed 1-17-84; 8:43 am]

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#### 12 CFR Part 226

(Reg. Z; TIL-1)

#### Truth in Lending; Official Staff Commentary Revision

AGENCY: Board of Governors of the Federal System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment a proposed change to the official staff commentary to Regulation Z (Truth in Lending). The commentary

applies and interprets the requirements of Regulation Z with regard to consumer credit transactions and is a substitute for individual staff interpretations of the regulation. The proposal addresses the scope of the securities transaction exemption contained in § 226.3(d) of Regulation Z and is intended to clarify its application.

**DATE:** Comments must be received on or before February 24, 1984.

**ADDRESS:** Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to the C Street entrance, 20th and C Streets, N.W., Washington, D.C. between 8:45 a.m. and 5:15 p.m. Comments should include a reference to TIL-1. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ruth R. Amberg, Senior Attorney, or Richard Garabedian, Staff Attorney, in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3667.

**SUPPLEMENTARY INFORMATION:** (1) *General.* Effective October 13, 1981, an official staff commentary was published to interpret Regulation Z (12 CFR Part 226). The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise. The present proposal is not a general update, but rather a specific proposal addressing the relationship of the securities transaction exemption to consumer asset management accounts. The proposal is being published at this time, rather than with the most recent proposed update (48 FR 54642, December 6, 1983), because the Board's staff is also now publishing for comment a proposed update to Regulation E (Electronic Fund Transfers), some portions of which address the impact of that regulation on consumer asset management accounts. As both Regulations E and Z may be applicable to these accounts, the preparation of comments will be significantly aided if financial service providers can consider the impact of both regulations at the same time. It is expected that if this proposal is adopted it will be issued in final form in March 1984 with optional compliance until the uniform effective date of October 1 for mandatory compliance with commentary revisions.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced

arrows, while language that would be deleted is set off with brackets.

(2) *Proposed revision.* Following is a brief description of the proposed revision to the commentary:

#### Subpart A—General

##### § 226.3 Exempt transactions.

##### 3(d) Securities or commodities accounts.

This section would be revised to clarify the scope of the exemption for securities or commodities transactions. The need for clarification has arisen largely in the context of consumer financial services that combine transaction and investment features ("consumer asset management accounts") and are offered by brokerage and investment firms.

Consumer asset management accounts permit the consumer to place assets (for example, cash and securities) in one account for the purpose of engaging in consumer transactions, investing excess cash balances in high-yield funds (for example, a money market mutual fund), and buying and selling securities. Typically, if the cash balances and liquidated money market shares are insufficient to pay for the consumer purchase, credit is extended by the broker and such credit is collateralized by securities in the account.

Regulation Z (12 CFR 226.3(d)) provides an exemption for "transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission". The exemption is based on § 104(2) of the Truth in Lending Act. The legislative history of the exemption indicates that it was placed in the act to exempt credit extended by a registered broker-dealer for purchasing or carrying securities. The exemption was premised on the Securities and Exchange Commission's adopting regulations requiring credit disclosures substantially similar to those required by the act. In response, the SEC adopted regulations (17 CFR 240.10b-16) requiring detailed disclosure of credit terms in connection with any securities transaction.

The proposed commentary amendment would make clear that credit that is extended by a broker-dealer through a consumer asset management account and is not for a securities transaction—but is for the payment of other goods and services—remains subject to Regulation Z. (Of course, credit extended by broker-dealers for non-securities transactions outside the context of such an account is also subject to the regulation.)

Protections comparable to those in Regulation Z (including, for example, error resolution procedures) do not appear to exist for this category of transactions; comment is solicited on this point. The proposal also reflects the relationship between Regulations E and Z in consumer asset management accounts if electronic fund transfers are involved.

#### List of Subjects in 12 CFR Part 226

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

(3) *Text of Revision.* New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets. The proposed revision to the commentary (Supplement I to Part 226) reads as follows:

#### Supplement I—Official Staff Commentary—TIL-1

##### Subpart A—General

\* \* \* \* \*

##### Section 226.3—Exempt Transactions

\* \* \* \* \*

##### 3(d) Securities or Commodities Accounts.

1. *Coverage.* This exemption does not apply to [a transaction with a broker registered solely with the state or to a separate credit extension in which the proceeds are used to purchase securities.] ▶ the following:

- A transaction with a broker registered solely with the state.
- A separate credit extension in which the proceeds are used to purchase securities.
- A transaction that does not involve the purchase or carrying of securities, even if it is processed through a plan that may also be used to purchase or carry securities offered by a registered broker-dealer. For example, under certain types of consumer asset management accounts, a consumer may purchase any number of goods and services that do not involve securities. Payment for such items may be made, in some cases, by credit extend on the maximum loan value of the securities in the plan. Although Regulation Z applies to these non-securities transactions, note that if electronic fund transfers are involved in these plans, Regulation E supersedes provisions of Regulation Z regarding card issuance and liability for unauthorized use, as well as the procedures for resolving errors (except for § 226.13(d) and (g)). ◀

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(15 U.S.C. 1604)

Board of Governors of the Federal Reserve System, January 12, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-1297 Filed 1-17-84; 8:45 am]

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