FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R-0689]

Truth in Lending Determination of Effect on State Law (Wisconsin)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Preemption determination.

SUMMARY: The Board is publishing in final form a determination as to the consistency with the Truth in Lending Act and Regulation Z of certain provisions in the law of Wisconsin. The provisions deal with disclosures for home equity plans and the right of a nonapplicant spouse to terminate a plan and a creditor to accelerate the outstanding balance. The Board has determined to preempt some of the state provisions.

EFFECTIVE DATE: October 1, 1991, with compliance optional before that date.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-3667. For the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544, Board of Governors of the Federal Reserve System , Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) 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 the implementing provisions of the regulation and state laws. Preemption 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)(3)).

Preemption determinations have an effective date of the October 1 that follows the determination by at least six months, as required by section 105(d) of the act. As a result, this determination has an effective date of October 1, 1991, although compliance may begin before that time.

(2) Discussion of Specific Request and Final Determination

The Board was asked to determine whether specific provisions of the Wisconsin Statutes regarding disclosures for open-end credit plans and the ability of a nonapplicant spouse to terminate an open-end credit plan are inconsistent with amendments to Regulation Z (12 CFR 226.5b) that regulate disclosure and substantive provisions of open-end credit plans secured by a consumer's dwelling. The requesting party asked whether provisions of Wisconsin Statutes section 422.308, requiring certain disclosures to be given in a certain manner for open-end credit plans, including home equity plans, are preempted by § 226.5b (a) and (d) of Regulation Z. The requesting party also questioned whether Wisconsin Statutes section 766.565(5), part of Wisconsin's Marital Property Act, is preempted by § 226.5b(f)(3) of Regulation Z. (After a review of the state and federal provisions, the Board determined that the more appropriate analysis is a comparison of the state law with § 226.5b(f)(2) of Regulation Z.) the state provision permits the non-obligor spouse of a consumer who opens an open-end credit plan to terminate the plan by giving written notice to the creditor. Creditors, in turn, are permitted to include in their open-end credit agreements a provision authorizing them to declare the account balance due and payable upon receiving this notice.

The Board published a proposed determination on April 10, 1990 (55 FR 13282). In regard to the disclosures for open-end home equity plans required at application under state and federal law, the Board proposed to determine that in cases where the amount of the annual percentage rate (APR) disclosed to consumers under state law differs from the amount that would be disclosed under federal law, the state disclosure is preempted. The Board proposed to determine that the remaining state disclosures, as well as a state law provision requiring that disclosures be set forth on the application for open-end credit, are not preempted. The Board also proposed a determination that the provison under Wisconsin law that permits a non-obligor spouse of a consumer to terminate a home equity plan is not preempted, but that the provision permitting a creditor to accelerate the outstanding balance in such cases is preempted by federal law.

The Board received three comments on the proposed determination. Two of the commenters, representing Federal Reserve Banks, agreed with the Board's proposed determination. One commenter, representing a Wisconsin bank holding company, objected to the Board's proposed determination to preempt the state law provision that permits a creditor to accelerate a home equity plan when a non-obligor spouse terminates the plan. After careful review, the Board has made a final determination confirming its proposal regarding the state law provisions at issue for the reasons discused below.

In regard to the APR disclosed to consumers at application, while state law does not define "annual percentage rate," it does define "finance charge" in Wisconsin Statutes section 421.301(20) to include charges other than interest. (See the notice of proposed preemption determination for a more detailed discussion of the state provision.) While the definition of "finance charge" under federal law also includes charges other than interest, the APR creditors are required to state in the disclosures given at application for home equity plans does not include costs other than interest. (See § 226.5b (d)(6) and (d)(12)(ii) of Regulation Z, which requires an explicit statement that the disclosed APR does not include costs other than interest.) Other than the state law's definition of "fnance charge," there is nothing to suggest at the APR disclosed under Wisconsin law would ever in fact differ from the APR disclosed under Federal law. Since the possibility does exist, however, the Board has determined that in cases where the amount of the APR disclosed to consumers under state law differs from the amount that would be disclosed under federal law, the state disclosure is preempted, since in those cases the state law requires the use of the same term as the federal law to represent a different amount than the federal law.

The Board has determined that the remaining state disclosures as well as the format requirement for such disclosures do not contradict federal law and are not preempted since a creditor can comply with both the state and federal provisions and the requirement of additional or different information is not by itself inconsistent with federal law. (See the notice of proposed preemption determination for further detail on the sections reviewed by the Board.)

In regard to the provision in Wisconsin Statutes section 766.565(5) that permits a non-obligor spouse to terminate and a creditor to accelerate a home equity plan, the Board noted in its proposal that a strict application of the federal preemption standards to the state law would suggest that the entire state provision is inconsistent with the federal law, but that valid reasons exist for not preempting the right of a nonapplicant spouse to terminate a plan. These include Wisconsin's declared interest in protecting certain marital property rights by effectively deeming a non-obligor spouse to be a "consumer" specifically for purposes of terminating

an open-end credit plan; and the fact that precedent exists under Regulation Z (in the rescission rules) for deeming a non-incurring person who has an ownership interest in the property that secures a plan to be a "consumer" and thus able to terminate a plan.

A similar basis cannot be found for permitting a creditor to interfere with the operation of the federal scheme by accelerating the outstanding balance in such cases. The one commenter who objected to the Board's preempting this provision questioned whether a creditor would be acting "unilaterally" since it would be accelerating in response to a spouse's terminating the plan. The statutory and regulatory restrictions on creditors' actions, however, are designed to protect the borrower from adverse results except in limited circumstances, and the spouse's involvement does not change that purpose. (As the commenter also indicated, other avenues are provided under § 226.5b(f)(2) of Regulation Z that would permit creditors to terminate and accelerate a home equity plan without the borrower's agreement.)

While the Board believes a valid basis exists for elevating a spouse to the status of a "consumer" and thus able to terminate a home equity plan, a creditor still may not automatically accelerate a plan in circumstances not provided for under the federal regulation. The Board has determined, therefore, that the provision under Wisconsin Statutes section 766.565(5) that permits a non-obligor spouse to terminate a home equity plan is not preempted. The provision, however, permitting a creditor to accelerate the outstanding balance in such cases is inconsistent with the purpose of the federal law and is therefore preempted.

Lists of Subjects in 12 CFR Part 226

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

(3) Preemption determination

The following order sets forth the preemption determination, which also will 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, 15 U.S.C. 1610, the Board has determined that certain provisions in the law of Wisconsin are inconsistent with and therefore preempted by the federal law. The determination is as follows:

Preemption determination—Wisconsin. Effective October 1, 1991, the following provisions in the state law of Wisconsin are prempted by the federal law:

In Wisconsin Statutes section 422.308(1), the disclosure of the annual percentage rate in cases where the amount of the annual percentage rate disclosed to consumers under the state law differs from the amount that would be disclosed under federal law, since in those cases the state law requires the use of the same term as the federal law to represent a different amount than the federal law.

In Wisconsin Statutes section 766.565(5), the provision permitting a creditor to include in an open-end home equity agreement authorization to declare the account balance due and payable upon receiving notice of termination from a non-obligor spouse pursuant to that subsection, since such provision is inconsistent with the purpose of the federal law.

Board of Governors of the Federal Reserve System, July 31, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-18235 filed 8-3-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-43; Amdt. 39-6341]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This notice corrects the amendatory instruction in the correction to the AD previously published in the Federal Register (55 FR 29351, July 19, 1990) on McDonnell Douglas Model 369D, E, F, and FF helicopters. The amendatory instruction, which appears on page 29352, should read as follows: 2. Section 39.13 is amended by correcting paragraph (d) of Amendment 39-6051 (54 FR 105, January 4, 1989), AD 89-02-01, as amended by Amendment 39-6341 (54 FR 40382, October 2, 1989) as follows:

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM-123L, Northwest Mountain Region, Los Angeles Aircraft Certification Officer, 3229 E. Spring Street, Long Beach, California 90806-2425, telephone (213) 988-5233.

Issued in Forth Worth, Texas, on July 27, 1990.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-18257 Filed 8-3-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-198-AD; Amendment 39-6613]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10 series airplanes, which requires certain structural modifications and some inspections. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. This condition, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe, where feasible, rather than only repetitive inspections for known service problems.

DATES: Effective September 10, 1990. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of September 10, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90806, Attention: Director, Publication and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington; at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Aerospace