the request of the United States Attorney's Office pending legal action; either civil or criminal or for other good cause as determined by the Director, Appeals and Litigation Staff.

(h) The review officer will inform the appellant, hearing officer, original decisionmaker, and any other person servicing the account, by letter, of the decision, the reason for it, and the action to be taken.

(i) The decision letter will be mailed to the appellant by Certified Mail, return receipt requested.

(j) The decision letter will be accompanied by a review report which states the facts surrounding the hearing including, but not limited to: the background of the review issue; a summary of evidence; citations of the applicable provisions of law, regulation, applicable crop insurance policy or endorsement, or other Corporation directive on which the review officer relied for his/her decision; and the review officer's findings.

(k) The decision letter will contain the following statement: "This review concludes your administrative appeal."

§ 400.88 Authority of review officer.

(a) The review officer has the authority to:

(1) Rule on motions or requests;

(2) Receive evidence;

(3) Admit or exclude evidence;

(4) Request evidence or additional information;

(5) Make a written determination based on the record including additional evidence submitted;

(6) Overturn or modify the determination of the hearing officer in whole or in part; and

(7) Commit the Corporation to a course of action, without regard to the amount of money at issue.

(b) The review officer does not have the authority to compromise claims or to waive provisions of the regulations or the contracts of the Corporation.

§ 400.89 Effect of decision.

(a) *Effective date.* When an appeal or review is concluded, the effective date of the action to be taken will be the date of the determination or decision being appealed.

(b) *Finality.* The decision made in an appeal is administratively final if no review is requested within the allowable time period. The decision made in a review is administratively final.

(c) *Timeliness.* Whenever an adverse determination concerning a policy or application is appealed and the hearing officer or review officer reverses or modifies the final administrative action, the official who made the determination shall resume processing of the policy or application and notify the appellant of this within 15 days after receipt of the decision of the hearing officer or review officer. The official will advise the appellant if any further information is needed to complete processing.

§ 400.90 Records.

The hearing record and review record will be maintained in the offices of the Appeals and Litigation Staff for a minimum of three years.

§ 400.91 OMB control numbers.

Office of Management and Budget (OMB) control numbers are contained in subpart H to part 400 in title 7 CFR.

§ 400.92 Basis of determination.

The hearing officer and the review officer may only determine facts and apply applicable statutes, rules and regulations, and procedures of the Corporation to those facts. The hearing officer and review officer have no authority to make equitable adjustments contrary to the statutes, rules and regulations, or procedures of the Corporation. Any decision of a hearing officer or review officer claiming to contradict published statutes, rules and regulations, or procedures is not within the authority of said officer and is void.

§ 400.93 Reservation of authority.

Nothing contained in the regulations in this subpart shall preclude the Manager of the Corporation from determining any question arising under the program to which the regulations in this subpart apply.

Done in Washington, DC, on December 3, 1991.

Jane Wittmeyer,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 91-31033 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0743]

Truth in Lending; Home Equity Disclosure Rules

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on whether to revise provisions in Regulation Z (Truth in Lending) dealing with disclosure of any discounted initial rate and the payment examples for home equity lines of credit. The rules in question relate to the Home Equity Loan Consumer Protection Act of 1988, which requires creditors to provide consumers with information for open-end credit plans secured by the consumer's dwelling. Although the final regulations implementing the law were adopted in June 1989, the approach adopted by the Board for disclosure of the discounted initial rate and certain payment examples has been examined by the U.S. Court of Appeals for the District of Columbia Circuit in recent litigation, and remanded to the Board for further consideration. The Board also is soliciting comment on a separate proposal to resolve a conflict between the home equity rules and provisions of the Federal Reserve Act and Regulation O (dealing with loans to bank executive officers).

DATES: Comment must be received on or before February 28, 1992.

ADDRESSES: Comments should refer to Docket No. R-0743 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street, NW.) any time. Comments will be available for inspection in the Freedom of Information Office, room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Home Equity Loan Consumer Protection Act was enacted in November 1988. On January 23, 1989, the Board published for comment a proposed rule to implement the statute (54 FR 3063) and on June 9, 1989, adopted a final rule (54 FR 24670). Compliance with the regulation was mandatory as of November 7, 1989.

On November 1, 1989, Consumers Union filed suit against the Board challenging certain aspects of the regulation. Among other issues, Consumers Union challenged the provision in the regulation permitting

creditors to suspend advances of credit during any period the rate cap is reached. Consumers Union also challenged the part of the regulation permitting creditors to give disclosures about any "repayment" period—that is, when advances are no longer made and the consumer is paying off the amount borrowered—at the time the repayment period begins, rather than at the time of application. In March 1980 the Board published a proposed rule to amend the regulation relating to the rate cap and delayed timing issues. (55 FR 10465.) In September 1990 the Board adopted a final rule (55 FR 38310) (correction notice to 55 FR 39538).

The U.S. District Court for the District of Columbia issued a decision in favor of the Board on other aspects of the Consumers Union lawsuit in May 1990. *Consumers Union* v. *Federal Reserve Board* (736 F. Supp. 337). Consumers Union appealed that decision to the U.S. Court of Appeals for the District of Columbia Circuit. In July 1991, the Court of Appeals issued its decision, deciding in favor of the Board on four of the issues presented on appeal, and remanding to the Board for further consideration two other issues. *Consumers Union* v. *Federal Reserve Board* (938 F.2d 266). The two issues deal with how creditors disclose a "teaser" or initial discounted rate, and the payment examples that must be provided in the preapplication disclosures. This notice solicits comment on these two issues.

The Board is soliciting comment on a third issue, unrelated to the litigation, which has arisen since the last revision of the home equity rules. That issue concerns the conflict between § 22 of the Federal Reserve Act, which regulates member bank loans to executive officers, and the substantive rules contained in the home equity statute.

(2) Proposed Amendments to Regulation Z.

(i) *Teaser Rate Provision.* The home equity statute provides that creditors must state any initial "teaser" or discounted rate in the preapplication disclosures. Specifically, the statute states: "[I]f an initial annual percentage rate is offered which is not based on an index—

(i) A statement of such rate and the period of time such initial rate will be in effect."

In the final regulations implementing the statute, the Board did not require that the discounted rate be stated. (Creditors are required to disclose the fact that the initial rate is discounted, state the period of time the rate will be in effect, and alert consumers to "ask about" the current discount rate.) In its briefs to the District Court and the Court of Appeals, the Board stated that the regulation diverged from the statutory language in reliance on the Board's "exception" authority.

The Truth in Lending Act grants the Board broad authority in implementing the statute. Section 105 of the act provides that implementing regulations "may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of (the Truth in Lending Act), to prevent circumvention or evasion thereof, or to facilitate compliance therewith." This broad delegation of authority to the Board has been recognized by the Supreme Court.[1] In its briefs to the District Court and Court of Appeals the Board argued that an exception from the statute's literal language was justified because of the difficulty of disclosing the varying discounted rates in the preprinted early disclosures. The Board's briefs stated that requiring the specific discount to be included on a preprinted form could lead to the curtailment of such a feature since the disclosures would have to be reprinted any time the discounted rate changes. The Board also noted that of most importance to the consumer is the *fact* that a rate is temporary and will increase after a short period of time, rather than the exact amount of the discount. Moreover, since discounted rates are lower than the fully indexed rate and beneficial to the consumer, it seems likely that lenders will make sure the consumer knows the current rate.

The Court of Appeals noted that the issue of the Board's exception authority had been raised for the first time during the course of the litigation, and had not been passed upon in the first instance by the Board itself. The Court thus remanded this portion of the regulation to the Board, to allow it to identify the scope of its exception authority under the Truth in Lending Act, and to decide whether an exception was necessary or appropriate in the case of the teaser rate provision.

Few commenters addressed the discount provision in the proposed regulation; thus the administrative record and other documents (such as the **Federal Register** notice) contain little discussion of this provision. The Board is soliciting additional comment on the teaser rate disclosure and whether it should be left unchanged based on the reasons discussed above (or other reasons) or revised. If it were revised, the regulatory language could more closely track the statutory language and require creditors to state the discounted rate in the early disclosure, and delete the statement telling consumers to ask about the current discount. Commenters are requested to address the advantages and disadvantages to consumers of amending the regulation to require disclosure of the specific teaser rate. In addition, comment is requested on alternatives, such as requiring lenders to state the discount as a range, either specific numbers—for example, 5% to 7%—or specific amounts below the fully indexed rate—for example, 2 to 4 percentage points below the fully indexed rate. Such a disclosure could also alert the consumer to "ask about" the current discount. This would be similar to the approach taken in disclosing interest rate limitations for variable-rate plans. The Board requests comment on whether and the extent to which stating the specific amount of the discount is more burdensome than stating the amount of time any discounted rate is in effect, which is a current requirement of the regulation. Finally, the Board requests comment on whether an exception is necessary or appropriate in the case of the discounted initial rate disclosure.

(ii) Payment Examples Issue

The statute requires three types of payment examples to be provided for home equity plans: (1) "An example" showing the minimum periodic payment and amount of time needed to repay the line, based on a $10,000 balance and a recent annual percentage of rate (the "minimum payment" example); (2) a statement of the minimum periodic payment based on a $10,000 balance when the maximum annual percentage rate is in effect (the "worst case" example); and (3) an historical table, based on a $10,000 extension of credit, showing how annual percentage rates and payments would have been affected by index value changes over the most recent 15 year period (the "historical example"). The statute says the worst case example and the historical example must be stated for "each repayment option" under the plan.

In implementing the statute, the Board chose to allow creditors to provide representative examples of the various payment options offered, rather than requiring separate examples for each payment option. Commenters on the proposed regulation stated that lenders

[1] See *Anderson Bros. Ford* v *Valencia*, 452 U.S. 205 (1981); *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555 (1980).

often offer a number of minimum payment options to consumers. For example, a creditor may offer consumers the option of paying interest only or 1%, 2%, 3%, 4%, or 5% of the outstanding balance under its plan.

To try to ensure consumers were not overwhelmed with multiple payment examples, the Board created three categories of payment options: "Interest-only" plans requiring a fixed percentage or fraction of the outstanding balance; and all other payment options offered. (See comments 5b(d)(5)(iii)-2, 5b(d)(12)(x)-1, and 5b(d)(12)(xi)-7 of the Official Staff Commentary.) Under this rule, no matter how many payment options were offered, creditors would never have to disclose more than three minimum payment examples, three worst case examples, and three historical examples. Creditors would of course have to narratively describe all payment choices. In its briefs to the District Court and Court of Appeals the Board noted that requiring a worst case example and historical example for every payment option offered would result in "information overload" and would likely lead lenders to reduce the options offered to consumers. The briefs argued that the Board adopted a rule different from the one set out in the statute pursuant to its exception authority. Again, the Court of Appeals remanded this issue to the Board because the issue of the Board's exception authority under the Truth in Lending Act has not been developed in the rulemaking record, but was raised only in litigation.

The Board is thus soliciting additional comment on the payment example rules and whether they should be left unchanged based on the reasons given above (or other reasons) or revised. Specifically, comments are requested to address the advantages and disadvantages to consumers of requiring an historical example and worst case example for each payment option offered by the creditor. Commenters are also requested to discuss whether these examples provide necessary or appropriate use of the Board's exception authority under the Truth in Lending Act.

Regulatory language reflecting such an approach is included in this notice. If this approach were adopted the Board would make appropriate changes to the Official Staff Commentary to Regulation Z.

(iii) Home Equity and Regulation O issue

The home equity statute provides that a creditor may not terminate and demand payment of a line of credit except in three specified circumstances: fraud, failure of the consumer to make payments, and action by the consumer that impairs the security for the plan. The regulation implementing this provision provides that a creditor may not include in its contract a provision permitting it to terminate and accelerate the balance due except for these situations.

Section 22(g) of the Federal Reserve Act establishes rules relating to loans to executive officers by member banks. The law provides that a member bank may extend credit to its own executive officers provided "it is on condition that it shall become due and payable on demand of the bank" any time the person is indebted to any bank in an amount in excess of that prescribed by the appropriate federal banking agency. Regulation O, which implements the statute, provides that a bank making loans to any of its executive officers shall retain the right to call the loan any time the officer is indebted to the bank (or any other bank) in excess of 2.5% of the bank's capital and unimpaired surplus or $25,000 (whichever is higher), but in all cases any amount over $100,000. The statute and implementing regulation are intended to limit the risks of insider lending and implement safety and soundness policies.

If the home equity statute and section (22)(g) of the Federal Reserve Act were both given full effect, they could be read as effectively prohibiting home equity loans by member banks to their executive officers. The home equity statute prohibits calling a loan except in the circumstances specifically set forth in the statute. Section 22(g) of the Federal Reserve Act prohibits member banks from making loans to executive officers unless the bank retains the ability to demand payment of the loan in certain circumstances. The home equity statute does not recognize the condition as a permissible reason to call a line of credit. Thus, if both laws were given full effect, member banks could not offer home equity lines to their executive officers.

An alternative way of reconciling these provisions is by adherence to the rule that if two statutes are in irreconcilable conflict, the most recent should govern. (See, for example, *Natural Resources Defense Council* v. *United States Environmental Protection Agency*, 824 F.2d 1258 (1st Cir. 1987).) Adherence to the more recent home equity rules would mean the Congress intended to repeal the permissive provisions in section 22(g) allowing loans to executive officers under certain circumstances. Under this approach, member banks could offer home equity lines to their executive officers, but would be prohibited from including demand features.

The Board believes that the Congress, in enacting the home equity statute, did *not* intend to override the provisions in the Federal Reserve Act dealing with demand provisions in loans made to executive officers. Absent evidence to the contrary courts generally have not deemed the Congress to have repealed a prior law when there is no indication of Congressional intent to do so.[2] Repeals by implication are accepted with great reluctance by the courts.[3] There is no suggestion in the legislative history of the home equity statute that the Congress intended to repeal section 22(g) of the Federal Reserve Act and prohibit banks from making home equity loans to their executive officers.

The Board favors a different approach. The home equity statute deals broadly with home equity loans to borrowers generally, while section 22(g) of the Federal Reserve Act, which deal with loans to specific types of borrowers, is much more specific in its focus. Broad statutes are not typically deemed to override specific statutes, absent evidence of Congressional intent to achieve that result. (See, for example, *Morton* v. *Mancari*, 417 U.S. 535 (1974).)

The Board believes the proper way to reconcile these provisions is by giving effect to the policies contained in section (g) of the Federal Reserve Act. This would permit banks to include a demand provision in loans to executive officers under which banks could exercise the demand feature only under the circumstances set forth in Regulation O. This approach would create an exception to the home equity rules to accommodate the express terms of section 22(g). This approach would give effect to the policies contained in the Federal Reserve Act, and at the same time create a very limited exception to the home equity statute. In addition to the statutory analysis, the Board believes its exception authority under the Truth in Lending Act may provide a basis for modifying the home equity rules and permitting member banks to include a demand feature in lines of credit made to executive officers. Thus the Board is soliciting comment on a proposed modification to the home equity regulation permitting a bank to include a call feature in its contract for home equity lines for executive officers and exercise that feature as provided in

[2] See, for example, *Rodriguez* v. *United States*, 480 U.S. 522, (1987).

[3] See, for example, *Watt* v. *Alaska*, 451 U.S. 259 (1981).

section 22(g) of the Federal Reserve Act and implementing Regulation O.

If such a change were made, it would raise a related question regarding disclosures. Currently, § 226.5b(d)(4)(iii) of Regulation Z requires creditors to state the conditions under which a creditor may terminate a plan and accelerate the balance. (Alternatively, the creditor may include a statement with the disclosures that the consumer may receive upon request such information.) If the Board adopts the amendment to the home equity rules permitting a member bank to terminate the plan as permitted by the Federal Reserve Act and Regulation O, this would raise the issue of whether an additional disclosure should be made to executive officers alerting them to such a provision. Comment is solicited on whether executive officers would be adequately informed of such a provision by its inclusion in the contract, and whether this feature should be required to be disclosed with the early disclosures. Comment is also requested on whether the creation of a separate disclosure form for executive officers would impose unjustifiable costs and burdens on institutions, and whether inclusion of such a notice on a form given to all consumers would be desirable.

(3) Comments Requested

Interested parties are invited to submit comments on the proposal. Depending on the resolution of the teaser rate and payment example issues and the conflict between the home equity rule and Regulation O, in the final rule the Board may make conforming changes to the regulation, the model forms and clauses in appendix G, and the Official Staff Commentary. The Board is including language for the Regulation O issue and the teaser rate and payment example issues should the regulation be amended in response to issues raised by commenters.

(4) Economic Impact Statement

The Board's Office of the Secretary has prepared an economic impact statement on the proposed revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

(5) Text of Proposed Revisions

Certain conventions have been used to highlight the revisions that would be necessary if the regulation were changed. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Pursuant to 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 modifying §§ 226.5b(d)(12)(v), 226.5b(d)(12)(vi), 226.5b(d)(12)(xi), 226.5b(f)(2)(ii), and 226.5b(f)(2)(iii), and by adding § 226.5b(f)(2)(iv).

List of Subjects in 12 CFR Part 226

Advertising; Banks, banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Reporting and recordkeeping requirements; Truth in lending.

1. The authority citation for part 226 continues to read as follows:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. No. 96–221, 94 Stat. 170 (15 U.S.C. 1604 et seq); sec. 1204(c), Competitive Equality Banking Act, Pub. L. No. 100–86, 101 Stat. 552.

Subpart B—Open-End Credit

2. 12 CFR 226.5b is amended by revising paragraphs (d)(12) (v), (vi), and (xi), first sentence, and (f)(2) (ii) and (iii), and by adding paragraph (f)(2)(iv) to read as follows:

§ 226.5b Requirements for Home Equity Plans.

* * * * *

(d) *Content of disclosures.* * * *

(12) *Disclosures for variable-rate plans.* * * *

(v) A statement that the consumer should ask about the current index value, margin, [discount or premium,] and annual percentage rate.

(vi) [A statement that] ►If◄ the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, ►the initial rate◄ and the period of time such initial rate will be in effect.

* * * * *

(xi) An historical example ►for each payment option◄, based on a $10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. * * *

* * * * *

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise—

(1) * * *

(2) * * *

(i) * * *

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; [or]

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security [.] ►; or

(iv) Federal law dealing with credit extended to executive officers of a depository institution specifically requires that as a condition of the plan the credit shall become due and payable on demand.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 20, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–30918 Filed 12–27–91; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 556

Policy Statement on Branching by Federal Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its policy statement on branching by federal savings associations. The proposed amendment deletes current regulatory restrictions on the branching authority of federal savings associations to permit nationwide branching to the extent allowed by federal statute. The amendment is intended to facilitate consolidation and geographic diversification among savings associations, and thereby foster safety and soundness, and to improve the quality of services available to customers. The proposal also clarifies a provision regarding examination of a branching applicant's past record of compliance with the Community Reinvestment Act (CRA) and otherwise updates and streamlines the branching policy statement by deleting some provisions and consolidating the remaining paragraphs by subject matter

DATES: Comments must be received on or before January 29, 1992.

ADDRESSES: Send comments to: Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., street level.

FOR FURTHER INFORMATION CONTACT: Michael P. Vallely, Senior Attorney, (202) 906–6241; Kevin A. Corcoran, Assistant Chief Counsel, (202) 906–6962; V. Gerard Comizio, Deputy Chief