

FEDERAL RESERVE SYSTEM**12 CFR Part 226****[Regulation Z; Docket No. R-1284]****Truth in Lending****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule; technical amendment.

SUMMARY: The Board is revising the official staff commentary to Regulation Z, which implements the Truth in Lending Act, to clarify an amendment published on November 9, 2007. The clarification and the earlier amendment relate to the electronic delivery of disclosures under Regulation Z.

DATES: The amendment is effective January 14, 2008. The mandatory compliance date is October 1, 2008.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:**I. Background**

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to promote the informed use of credit and assist in shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwellings. TILA and Regulation Z require a number of disclosures to be provided in writing.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq.*, was enacted in 2000. The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in

electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

Recently the Board published amendments to Regulation Z and the official staff commentary to the regulation to provide guidance on the use of electronic disclosures, consistent with the E-Sign Act (72 FR 63,462, November 9, 2007). The amendments take effect on a mandatory basis on October 1, 2008. The Board has received questions about one aspect of the official staff commentary accompanying the November 2007 amendments to Regulation Z. The Board is now issuing this clarification to the staff commentary to address the questions raised.

II. The November 2007 Final Rule

Under the Board's November 2007 final rule, creditors may provide certain shopping or advertising disclosures required by Regulation Z in electronic form without obtaining the consumer's consent pursuant to the E-Sign Act. These include the disclosures required to be provided on or with credit card applications and solicitations (§ 226.5a) and applications for home-equity lines of credit (§ 226.5b). Also included are the disclosures that must be provided when an application is provided to the consumer for certain adjustable rate mortgage (ARM) loans (§ 226.19(b)). Many creditors that commented on the Board's proposed rules, which were published for comment in April 2007, urged that they be permitted to provide these disclosures in paper form in appropriate cases, even when the application or solicitation is accessed by the consumer electronically. They noted that a consumer or creditor's employee might complete an electronic application by entering information at a terminal or kiosk located in the creditor's office and that paper disclosures would be more appropriate in such cases. In response to the commenters' concerns, the November 2007 final rule states that if an application or solicitation is accessed by the consumer in electronic form, the required application or solicitation disclosures may (rather than must) be provided in electronic form on or with the application or solicitation. *See* 12 CFR 226.5a(a)(2)(v), 226.5b(a)(3), and 226.19(c).

Because the regulation allows disclosures to be given in either paper or electronic form when consumers access an application or solicitation electronically, the Board also revised the commentary to Regulation Z to provide examples of how creditors can

satisfy the requirement that the disclosures be "on or with" the application or solicitation in particular circumstances. As revised, the commentary reflects that where a consumer accesses and submits an application form using a home computer via the creditor's Web site, the creditor must provide the disclosures electronically with the application form on the Web site to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the consumer, the disclosures would not be timely and would not be provided on or with the application. In contrast, if a consumer is physically present in the creditor's office, and accesses and submits an electronic application—such as via a terminal or kiosk—the revised commentary notes that the creditor could use paper disclosures to comply with the timing and delivery requirements of the regulation ("on or with"). *See* comments 5a(a)(2)-9, 5b(a)(3)-1, and 19(c)-1. For example, a loan officer could give the disclosures to the consumer in paper form, or in the case of an unattended kiosk, the kiosk could have a printer and provide paper disclosures.

III. Revisions to the Staff Commentary

Following publication of the November 2007 final rule, questions have been raised about other situations where creditors could provide paper disclosures in a timely manner to consumers accessing a credit application electronically, even though the consumers are not physically present in the creditor's office. For example, consumers might access a credit application using an electronic terminal or kiosk on the premises of the creditor's affiliate or a third party (such as a retail store) that has arranged with the creditor to provide applications to consumers. In these cases, consumers could receive paper disclosures with the credit application in the same manner as in the creditor's own office. This is consistent with the revised regulation and the Board's intent in issuing the November 2007 final rule. Accordingly, the Board is revising comments 5a(a)(2)-9, 5b(a)(3)-1, and 19(c)-1, to clarify that these are additional examples where paper disclosures would satisfy the rule's requirements for providing disclosures "on or with" the application.

The Board is issuing this commentary revision in final form. Under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, publication of a notice of proposed rulemaking is not required for interpretative rules, general statements

of policy, or rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A). In this case, the Board has determined that the public notice and comment provisions do not apply to this rulemaking because the revisions are interpretative rules. The commentary revision does not establish new regulatory requirements and merely clarifies, through additional examples, how creditors can meet the existing requirement for providing disclosures "on or with" applications and solicitations in particular circumstances. Moreover, the commentary revision provides creditors with an expanded safe harbor for complying with the rule by allowing them to use either paper or electronic disclosures in the circumstances described, consistent with the public comments previously received by the Board. The changes, therefore, meet the requirements for exemption from notice and comment in 5 U.S.C. 553(b)(A).

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in Lending.

For the reasons set forth in the preamble, the Board amends the Official Staff Commentary to Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

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

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to part 226, the following amendments are made:

a. In Section 226.5a—Credit and Charge Card Applications and Solicitations, under 5a(a)(2) Form of Disclosures, paragraph 9. is revised.

b. In Section 226.5b—Requirements for Home Equity Plans, under Paragraph 5b(a)(3), paragraph 1. is revised.

c. In Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions, under 19(c) Electronic disclosures, paragraph 1. is revised.

The amendments read as follows:

SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

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Subpart B—Open-End Credit

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Section 226.5a Credit and Charge Card Applications and Solicitations

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5a(a) General rules.

5a(a)(2) Form of disclosures.

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9. Form of disclosures. Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a credit card application or solicitation electronically (other than as described under ii. below), such as online at a home computer, the card issuer must provide the disclosures in electronic form (such as with the application or solicitation on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application or solicitation. If the issuer instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the card issuer's office, and accesses a credit card application or solicitation electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the card issuer to provide applications or solicitations to consumers), the issuer may provide disclosures in either electronic or paper form, provided the issuer complies with the timing and delivery ("on or with") requirements of the regulation.

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Section 226.5b Requirements for Home Equity Plans

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5b(a) Form of disclosures.

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Paragraph 5b(a)(3)

1. Form of disclosures. Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a home equity credit line application electronically (other than as described under ii. below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the creditor's office, and accesses a home equity credit line application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the

creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

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Subpart C—Closed-end Credit

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Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions

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19(c) Electronic disclosures.

1. Form of disclosures. Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses an ARM loan application electronically (other than as described under ii. below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the creditor's office, and accesses an ARM loan application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

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By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 11, 2007.

Jennifer J. Johnson,

Secretary of the Board.

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