

(2) Such supplemental loan shall:

(i) Be requested by the processor during the following October;

(ii) Be recourse or nonrecourse depending on which type of loan is in effect according to § 1435.102;

(iii) Be made at the loan rate in effect at the time the supplemental loan is made; and

(iv) Mature in 9 months minus the number of whole months that the initial loan was in effect.

(3) No loans will be made after June 30, 2003.

Signed in Washington, DC, on March 26, 1997.

**Bruce R. Weber,**

*Acting Executive Vice President, Commodity Credit Corporation.*

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

[Regulation Z; Docket No. R-0954]

#### Truth in Lending

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

**ACTION:** Request for comments.

**SUMMARY:** The Economic Growth and Regulatory Paperwork Reduction Act of 1996 directs the Board and the Department of Housing and Urban Development (HUD), where possible, to simplify and improve consumer disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) and to provide a single format satisfying the requirements of those laws. If legislation is necessary to accomplish these goals, the agencies are to submit legislative recommendations to the Congress. In December 1996, the agencies published for comment an advance notice of proposed rulemaking. After consideration of the comments and further review, the Board has determined that regulatory changes alone would be inadequate to achieve the goals of the Congress and that legislative changes are necessary to harmonize TILA and RESPA. Later this year, the Board and HUD will prepare a report to the Congress concerning potential legislative changes. The Board is publishing this notice to invite additional public comment on possible legislative action.

**DATES:** Comments are due June 30, 1997.

**ADDRESSES:** Comments should refer to Docket No. R-0954, and may be mailed to William W. Wiles, Secretary, Board of

Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, or to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street (between Constitution Avenue and C Street, NW). If accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format. Comments received will be available for inspection and copying in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

#### FOR FURTHER INFORMATION CONTACT:

Sheilah A. Goodman or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667; for the hearing impaired *only*, Diane Jenkins, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

**SUPPLEMENTARY INFORMATION:** On September 30, 1996, the President signed into law the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, 110 Stat. 3009). Section 2101 of that act directs the Board and HUD to simplify and improve the disclosures given in a home mortgage transaction subject to TILA and RESPA, and to create a single disclosure that will satisfy the requirements of both statutes, if possible. If legislation is necessary to develop a single simplified disclosure, the Board and HUD are directed to submit legislative recommendations to the Congress.

The statutes impose numerous requirements and serve various purposes. TILA seeks to promote the informed use of consumer credit by requiring standardized disclosures about credit terms and costs. The disclosures are intended to focus consumers' attention on certain aspects of their transaction and to assist them in comparison shopping. TILA establishes additional disclosure requirements for home-secured loans, and in some cases permits consumers to rescind such loans. RESPA contains both disclosure and price-related provisions. It requires that certain disclosures be given at various points in most mortgage transactions to ensure that consumers receive timely and useful information

about the costs associated with the transaction. It also prohibits kickbacks and referral fees to protect consumers from unnecessarily high settlement costs.

In December, the Board and HUD jointly published for comment an advance notice of proposed rulemaking on the issue of simplifying and combining the disclosure requirements of RESPA and TILA (61 FR 69055, Dec. 31, 1996). The notice requested comment on both regulatory and statutory changes to improve the current disclosure scheme. The Board and HUD received more than 80 comment letters, primarily from creditors and their representatives.

Public comments covered a wide range of issues, and are discussed below. Nearly all of the recommendations for reconciling the two regulations would require legislative action, such as certain suggested changes to the timing of disclosures under the two statutes. Some that would not require legislative change have been addressed already; where disclosures overlap the requirements have generally been consolidated. For example, Regulation Z permits creditors to substitute the good faith estimate and the settlement statement required under RESPA for the itemization of the "amount financed" under TILA. Similarly, Regulation X permits Regulation Z's disclosures for home equity lines of credit to substitute for the RESPA disclosures. Consistency between the regulations also increased when HUD amended Regulation X to cover subordinate lien loans, and through the Board's updates to the Regulation Z official staff commentary. For example, the agencies' regulations now use similar definitions for the terms "assumption," "refinance," and "business day."

The remainder of the recommendations for harmonizing TILA and RESPA generally involve small changes that could produce minor improvements in the disclosures, but probably would not be worth the corresponding compliance costs associated with the change, such as for retraining employees and printing new forms. More fundamentally, some commenters noted the importance of addressing the disclosure scheme under the two statutes in a comprehensive fashion rather than by piecemeal revisions.

Many other commenters recommended changes solely to Regulation Z—changes that would not directly further the objective of creating a single simplified disclosure, but that could simplify compliance. For

example, many commenters suggested simplifying the Regulation Z disclosures for adjustable rate mortgages, recommended consolidating the various model forms, or raised such matters as the permissibility of providing electronic disclosures.

After reviewing the comments, and upon further analysis in consultation with HUD, the Board has determined not to propose any changes to Regulation Z at this time. The Board believes that harmonizing TILA and RESPA to any significant degree requires changes that can only come about through legislative action. The Board will continue to work with HUD to develop legislative recommendations that would ease compliance for creditors and provide consumers useful information in a more timely manner. As part of this process, the Board will explore other mechanisms for obtaining further guidance from interested parties (such as public meetings or convening a working group), as suggested by many of the commenters. The Board is also reopening the comment period for three months to allow for additional public comment on legislative options.

In addition, the Board has several initiatives currently planned or under way that should assist in creating legislative recommendations, and that also will involve the consideration of many of the commenters' suggestions, discussed below, for amending Regulation Z. These initiatives include a consumer survey that the Board has commissioned, hearings that will be held in mid-1997 on the finance charge, a final rulemaking that involves streamlining certain adjustable rate mortgage loan disclosures, a proposal on electronic disclosures, and an upcoming comprehensive review of Regulation Z that will be undertaken pursuant to the Board's Regulatory Planning and Review program.

#### **Developing a Single Format and Simplifying Disclosure Requirements**

Both TILA and RESPA require creditors to provide preliminary disclosures soon after they receive an application. A number of commenters recommended the consolidation of the "early" TILA and RESPA disclosures for home purchase loans on a single form, and some commenters included samples of their own forms which combined the TILA disclosures on half the page and the RESPA disclosure of the good faith estimate of settlement costs on the other half. The Board notes that Regulation Z already permits creditors to place multiple disclosures on the same page or document, provided that they segregate the TILA disclosures from

other information and meet the general disclosure requirements, such as the clear and conspicuous standard. This interpretation is made explicit in the March 1997 update to the official staff commentary to Regulation Z (62 FR 10193, March 6, 1997).

Many commenters suggested that to achieve the goal of simplified disclosures, the agencies would have to develop a new disclosure scheme. In commenting on possible alternatives, a number of commenters noted that RESPA and TILA reflect differing but related goals that exist within each statute and that they need to be harmonized. The goal for some of the disclosures is comparison shopping. These disclosures must be given very early, before the consumer has decided what transaction to enter into, and estimates of costs would suffice for these disclosures. The goal of other disclosures is to highlight certain specific features of the transaction. These disclosures can only be made once the terms of the transaction are agreed to, and must be accurate to be useful. More generally, TILA focuses on credit costs (interest, points, and document preparation fees, for example), while RESPA includes both credit costs and the costs associated with the property transaction (property appraisal, real estate taxes, and the downpayment, for example).

A number of commenters made recommendations on what information might be disclosed under a new disclosure scheme. Some suggested that the new disclosure should list all the fees paid in connection with the transaction (this would include, for example, the mortgage broker, application, hazard insurance, title search, and recording fees), a simple interest rate and perhaps the annual percentage rate (APR), and certain terms like the monthly payment amount and escrow amounts. They suggested that all of the other required disclosures—including the amount financed, the finance charge, and the list of required providers—be eliminated. Others recommended adding an itemization of the finance charge to the existing TILA disclosures and identifying all costs on the RESPA settlement statement as part of either the finance charge or the amount financed.

Some commenters recommended that the disclosures provided at application should have the same format and content as the disclosures provided at settlement. Other commenters recommended that the disclosures at application contain just a few items of the most significance for comparison shopping and the disclosures at

settlement contain comprehensive information about the terms of the transaction. Some commenters recommended that the disclosures at application should contain estimates of the range of costs a consumer could expect to pay, while other commenters urged that the cost disclosures be as accurate as possible, particularly where the creditor has control over the cost, and be specific to the particular contemplated transaction.

Many commenters urged the Board and HUD to adopt consistent timing rules for disclosures. For TILA, the statute establishes the timing rules for all the required disclosures except those for variable-rate transactions (adjustable rate mortgages, or "ARMs"), which are set by regulation. The timing of disclosures goes to whether the purpose of the disclosures is to facilitate shopping, in which case the disclosures should be provided as early as possible, or to reveal critical features of the transaction, in which case the disclosures can only be provided once the details are resolved.

Several commenters urged that the scope of transactions covered by RESPA and TILA disclosure requirements be consistent. For example, RESPA's good faith estimate of closing costs is required for both purchase money and refinance transaction, while RESPA's special information booklet and the early TILA disclosures are required only for purchase money transactions. In preparing the report to the Congress on potential legislative changes, the Board will consider whether the current distinctions between purchase money transactions and refinancings, for example, are appropriate or whether, as some commenters recommended, the disclosure requirements—even if expanded—should be the same for all transactions.

#### **Improving Disclosure Requirements Under TILA**

TILA requires the disclosure of the APR (the cost of credit as a yearly rate) and the finance charge (the cost of credit as a lump sum). A number of commenters expressed concerns regarding this framework. Several focused on the exclusion from the finance charge of certain fees that a consumer pays as part of mortgage transactions, such as appraisal and application fees. They asserted that the mixed treatment of mortgage costs increases the complexity of compliance and reduces the usefulness of the APR. In addition, the fees included in the calculation of the APR and finance charge under TILA do not wholly correspond to the fees disclosed under

RESPA. Some asserted that the APR can be misleading because it assumes the loan is held to maturity, when most consumers hold their loans for a much shorter period. A few commenters objected to the inclusion in the finance charge of all the interest that would accrue over the life of the loan. They claimed the resulting APR is misleading because too much interest is included in the APR and because the interest is not discounted to its present value.

TILA requires that up to 16 items be disclosed in addition to the APR and finance charge. The commenters raised a number of general concerns about these other disclosures. Some questioned the value of certain disclosures required by the statute, including the total of payments and the security interest. Other commenters recommended modifications to certain disclosures. For example, creditors must disclose whether or not a penalty will be imposed if the obligation is prepaid in full. Some commenters asserted that the penalty should be disclosed only if it might be imposed. Several commenters recommended that the payment schedule disclosure be modified to require only the monthly payment amount, not the number of payments and dates too. Other commenters recommended that the disclosures concerning the contract reference, security interest, assumption policy, required deposit, demand feature, late payment, and prepayment penalty be explained in a booklet, perhaps as part of RESPA's special information booklet.

Other commenters noted that recent legislative changes have given the Board the authority to exempt certain transactions from TILA. The legislation directs the Board, in exercising this authority, to consider the amount of the loan, the financial sophistication of the borrower, and whether the loan is secured, among other factors. Some commenters made recommendations on how to exercise that authority, and recommended that similar exemptions be made under RESPA.

A number of commenters recommended changes to the right of rescission rules under TILA. They recommended limiting the types of transactions that are subject to the right of rescission and increasing the circumstances under which a consumer may waive that right. Some commenters recommended that creditors be required to provide a single copy of the notice of the right to rescind, instead of two copies as currently required.

A number of commenters recommended that the ARM disclosures be simplified. Detailed disclosures for

ARM loans must be provided at application or before a nonrefundable fee is paid, whichever is earlier. Commenters recommended eliminating the requirement that a creditor provide a historical example of how rates had varied in the past. Several commenters recommended that the Board modify the requirements so that creditors disclose the actual terms of the transaction and the actual contract language.

Commenters also recommended improvements to the disclosures required for home-equity lines of credit. Several consumer group commenters urged that the disclosures for these transactions should reflect the particulars of the transaction and assume that the maximum amount of the line of credit is borrowed immediately, that only the minimum monthly payments are made, and that the interest rate will vary as it has in the past. A number of commenters recommended that the Board eliminate the requirement to disclose a historical example. Commenters also urged the Board to modify the disclosures for home-secured loans to facilitate comparisons between lines of credit and installment loans by including all fees in the calculation of the APR.

Commenters identified other minor adjustments to TILA's disclosure requirements. For example, several commenters recommended that the Board require creditors to disclose a simple interest rate in addition to the APR and an explanation of how the APR is related to the interest rate. One commenter recommended that the Board add an introductory statement to each disclosure, explaining the purpose of the disclosure. (The Board notes that the regulation does not preclude creditors from providing additional information, and creditors can currently make these disclosures, separate from the required disclosures, if they choose.) A number of commenters recommended that the Board provide guidance on the permissible use of electronic disclosures. Some commenters recommended some reorganization of the required disclosure booklets, and suggested that the Board and HUD combine the special information booklet, the home-equity line of credit booklet, and adjustable rate mortgage booklet into one.

#### Legislative Recommendations

The information required to be disclosed under RESPA and TILA is extensive, the concepts disclosed are complex, and the statutes are written with different goals in mind. After consideration of the comments and further analysis, the Board has

determined that the changes that could be made to Regulation Z alone would not achieve the goals the Congress identified: simplifying and improving the TILA and RESPA disclosures and providing a single format that satisfies the requirements of the two laws. Improving the TILA and RESPA disclosures to make them significantly shorter, easier to understand, and consistent requires legislative change.

The Board will continue to work with HUD to develop a set of legislative recommendations that would promote streamlined disclosures for transactions subject to both RESPA and TILA. In preparing the report, the Board and HUD will consider the issues raised by the commenters and take steps to seek additional public views, such as by jointly convening a forum or task force. The public is invited to submit comments with any further suggestions they may have for legislative changes.

By order of the Board of Governors of the Federal Reserve System, March 28, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**12 CFR Parts 545, 556, 557, 561, 563, and 563g**

[97-27]

RIN 1550-AB00

### Deposits and Electronic Banking

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Notice of proposed rulemaking and advance notice of proposed rulemaking.

**SUMMARY:** The Office of Thrift Supervision (OTS) is proposing to substantially streamline its deposit-related regulations. This Notice of Proposed Rulemaking (NPR) follows a detailed staff review of pertinent regulations and policy statements in the Code of Federal Regulations (CFR) to determine whether each provision is necessary, imposes the least possible burden consistent with safety and soundness, and is clearly written. Today's proposal is issued pursuant to the Regulatory Reinvention Initiative of the Vice-President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.