FEDERAL RESERVE BANK
OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

DALLAS, TEXAS
75265-5906

December 22, 1998

Notice 98-121

TO: The Chief Executive Officer of each financial institution and others concerned in the Eleventh Federal Reserve District

SUBJECT

Proposed Revisions to the Official Staff Commentaries to Regulation M (Consumer Leasing) and Regulation Z (Truth in Lending); Notice of Adjustment of Dollar Amount

DETAILS

The Board of Governors of the Federal Reserve System has requested public comment on proposed revisions to the official staff commentary to Regulation M, which implements the Consumer Leasing Act. The commentary applies and interprets the requirements of the regulation. The proposed update would provide guidance on disclosures for lease advertisements, multiple-item leases, renegotiations and extensions, and estimates of official fees and taxes.

The Board also has requested public comment on proposed revisions to the official staff commentary to Regulation Z (*Truth in Lending*). The commentary applies and interprets the requirements of Regulation Z. The proposed update addresses the prohibition against the issuance of unsolicited credit cards. It provides guidance on calculating payment schedules involving private mortgage insurance. In addition, the proposed update discusses credit sale transactions where down payments include cash and property used as a trade-in.

Comments for both proposals must be received by January 22, 1999. Please address comments to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments for Regulation M should refer to Docket No. R-1028. Comments for Regulation Z should refer to Docket No. R-1029.

For additional copies, bankers and others are encouraged to use one of the following toll-free numbers in contacting the Federal Reserve Bank of Dallas: Dallas Office (800) 333-4460; El Paso Branch *Intrastate* (800) 592-1631, *Interstate* (800) 351-1012; Houston Branch *Intrastate* (800) 392-4162, *Interstate* (800) 221-0363; San Antonio Branch *Intrastate* (800) 292-5810.

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In addition, the Board has published an adjustment to the dollar amount that triggers certain requirements of Regulation Z for mortgages bearing fees above a certain amount. The Board annually adjusts the $400 amount based on the annual percentage change reflected in the Consumer Price Index that is in effect on June 1. For 1999, the adjusted dollar amount is $441. The adjustment is effective January 1, 1999.

ATTACHMENTS

Copies of the Board's notices as they appear on pages 67434–39, Vol. 63, No. 234 of the *Federal Register* dated December 7, 1998, and page 67575, Vol. 63, No. 235 of the *Federal Register* dated December 8, 1998, are attached.

MORE INFORMATION

For more information regarding Regulation M or Regulation Z, please contact Eugene Coy at (214) 922-6201. For additional copies of this Bank's notice, contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

Federal Register

Monday
December 7, 1998

and

Tuesday
December 8, 1998

FEDERAL RESERVE SYSTEM

12 CFR Part 213
[Regulation M; Docket No. R–1028]
Consumer Leasing

12 CFR Part 226
[Regulation Z; Docket No. R–1029]
Truth in Lending

12 CFR Part 226
[Regulation Z; Docket No. R–1030]
Truth in Lending

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1028]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff commentary.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation M, which implements the Consumer Leasing Act. The commentary applies and interprets the requirements of the regulation. The proposed update would provide guidance on disclosures for lease advertisements, multiple-item leases, renegotiations and extensions and estimates of official fees and taxes.

DATES: Comments should be received by January 22, 1999.

ADDRESSES: Comments should refer to Docket No. R–1028, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., in accordance with §§ 261.12 and 261.14, of the Board's Rules Regarding the Availability of Information. 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller, Staff Attorney, or Jane Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The Board's Regulation M (12 CFR part 213) implements the Act. The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the Act.

The commentary (12 CFR Part 213 (Supp. I)) is a substitute for individual written staff interpretations; it is updated annually, as necessary, to address significant questions that arise. This is the first update since the January 1, 1998 compliance date for the revised regulation. The Board expects to adopt revisions to the commentary in final form in March 1999. To the extent the revisions require changes in lessors' compliance procedures, the effective date for mandatory compliance is October 1, 1999.

II. Proposed Revisions

Section 213.3—General Disclosure Requirements

3(d) Use of Estimates

Comment 3(d)(1)–1(i) provides an example for estimating official fees and

taxes. The language of the example would be revised and moved to comment 4(n)–2.

Section 213.4—Content of Disclosures

4(c) Payment Schedule and Total Amount of Periodic Payments

Comment 4(c)–1 would be revised to clarify that scheduled payments can be made at both regular and irregular intervals. A similar revision would be made in comment 1 to appendix A.

4(f) Payment Calculation

Motor vehicle lease disclosures must include a mathematical progression of how periodic payments are derived. Comment 4(f)–2 would be added to address lease transactions that involve multiple items of leased property if one of the items is not a motor vehicle under state law.

4(n) Fees and Taxes

The lessor must disclose the total amount payable by the lessee during the lease term for official and license fees, registration, certificate of title fees, and taxes. These amounts may vary over the course of the lease, and some lessors have requested guidance for calculating an estimated total amount. Proposed comment 4(n)–2 would clarify lessors' ability to use rates or charges in effect at the time of disclosure. The proposed comment would also provide guidance for estimating fees and taxes that are based on the future market value of the leased property, both of which may vary depending on the valuation method used.

Section 213.5—Renegotiations, Extensions, and Assumptions

5(a) Renegotiations

A renegotiation occurs where a lease is satisfied and replaced by a new lease which generally triggers new disclosures. Proposed comment 5(a)–1 would be added to clarify that disclosures should conform to the lessee's legal obligation.

5(b) Extensions

Proposed comment 5(b)–3 would be added to provide guidance on lease extensions, which sometimes are consummated before the end of the initial lease term. The revisions would clarify that disclosures should be based on the lessee's obligation for the period of the extension, whether the extension agreement is consummated during the initial lease term or afterwards. Any fees required in connection with the extension also must be reflected in the new disclosures, regardless of when the fees are paid.

Section 213.7—Advertising

7(d)(2) Additional Terms

Proposed comment 7(d)(2)–1 would be revised to provide guidance for advertising periodic lease payments that are affected by third-party fees that vary by state or locality, such as taxes or licenses.

Appendix A—Model Forms

Comment 1 to appendix A would be revised to provide additional examples of permissible changes to the model forms.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1028, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

List of Subjects in 12 CFR Part 213

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

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 213 as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 would continue to read as follows:

Authority: 15 U.S.C. 1604; 1667f.

2. In Supplement I to Part 213, under *§ 213.3—General disclosure requirements*, under *Paragraph 3(d)(1) Standard,* paragraph 1. would be amended by removing "For example:" from the last line and paragraph 1.i. would be removed.

3. In Supplement I to Part 213, under *§ 213.4—Content of disclosures,* the following amendments would be made:

a. Under *4(c) Payment Schedule and Total Amount of Periodic Payments,* paragraph 1. would be revised; and

b. Under *4(f) Payment Calculation,* a new paragraph 2. would be added.

c. Under *4(n) Fees and Taxes,* a new paragraph 2. would be added.

The additions and revisions would read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

* * * * *

§ 213.4 Content of disclosures.

* * * * *

4(c) Payment Schedule and Total Amount of Periodic Payments

1. *Periodic payments.* The phrase "number, amount, and due dates or periods of payments" requires the disclosure of all payments that are made at regular ►or irregular◄ intervals and generally derived from rent, capitalized or amortized amounts such as depreciation, and other amounts that are collected by the lessor at the same interval(s), including, for example, taxes, maintenance, and insurance charges. Other periodic payments may, but need not, be disclosed under § 213.4(c).

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4(f) Payment Calculation

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►2. *Multiple-items.* If a lease transaction involves multiple items of leased property, one of which is not a motor vehicle under state law, at their option, lessors may include all items in the disclosures required under 4(f). See comment 3(a)–4 regarding disclosure of multiple transactions.◄

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4(n) Fees and Taxes

* * * * *

►2. *Estimates.* Lessors may estimate the total amount for fees and taxes based on the rates or charges in effect at the time of the disclosure and identify it as an estimate. Where a rate is applied to the market value of the leased property, lessors have flexibility in estimating the future value of the property, including using the unamortized balance under the lease or a published valuation guide. Lessors may accompany the estimate with a statement that the actual fee or tax may be higher or lower depending on the rate in effect or the value of the leased property at the time the fee or tax is due.◄

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4. In Supplement I to Part 213, under § 213.5—Renegotiations, extensions, and assumptions, the following amendments would be made:

a. A new undesignated heading, *5(a) Renegotiations,* and paragraph 1. would be added; and

b. Under *Paragraph 5(b) Extensions.,* a new paragraph 3. would be added.

The additions would read as follows:

§ 213.5 Renegotiations, extensions, and assumptions.

* * * * *

5(a) Renegotiations

►1. *Basis of disclosures.* Lessors have flexibility in making disclosures so long as they reflect the legal obligation under the renegotiated lease. For example, assume that a 24-month lease is replaced by a 36-month lease. The initial lease began on January 1, 1998, and was renegotiated and replaced on July 1, 1998, so that the new lease term ends on January 1, 2001. If the renegotiated lease covers the 36-month period beginning January 1, 1998, the new disclosures would reflect all payments made by the lessee on the initial lease and all payments on the renegotiated lease. However, if the renegotiated lease covers only the remaining 30 months, from July 1, 1998, to January 1, 2001, the disclosures would reflect only the charges incurred in connection with the renegotiation and the payments for the remaining period.◄

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5(b) Extensions

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►3. Basis of disclosures. The disclosures should be based on the extension period, including any upfront costs paid in connection with the extension. For example, assume that initially a lease ends on March 1, 1999. In January 1999, agreement is reached to extend the lease until October 1, 1999. The disclosure would include any extension fee paid in January and the periodic payments for the seven-month extension period beginning in March.◄

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5. In Supplement I to Part 213, under *§ 213.7—Advertising,* under *Paragraph 7(d)(2) Additional Terms.,* paragraph 1. would be revised as follows:

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§ 213.7 Advertising.

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7(d)(2) Additional Terms

* * * * *

1. *Third-party fees that vary by state or locality.* The disclosure of ►a periodic payment or◄ [the] total amount due at lease signing or delivery may:

i. Exclude third-party fees, such as taxes, licenses, and registration fees and disclose that fact; or

ii. Provide a ►periodic payment or◄ total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

* * * * *

6. In Supplement I to Part 213, under *Appendix A—Model Forms,* paragraph 1. would be revised as follows:

Appendix A—Model Forms

* * * * *

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or for quarterly or other ►regular or irregular periodic payments. The model form may also be modified to reflect that a transaction is an extension.◄ The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 1, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32338 Filed 12–4–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1029]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update addresses the prohibition against the issuance of unsolicited credit cards. It provides guidance on calculating payment schedules involving private mortgage insurance. In addition, the proposed update discusses credit sale transactions where downpayments include cash and property used as a trade-in.

DATES: Comments must be received on or before January 22, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1029, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m. in accordance with §§ 261.12 and 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel, or Pamela Morris Blumenthal or James H. Mann, Staff Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only*, Diane Jenkins at (202) 452–3544.

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 providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate. Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors. The act is implemented by the Board's Regulation Z (12 CFR Part 226).

The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise. The Board expects to adopt revisions to the commentary in final form in March 1999; to the extent the revisions impose new requirements on creditors, compliance would be

optional until October 1, 1999, the effective date for mandatory compliance.

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions. 2(a)(15) Credit Card. Section 226.2(a)(15) defines a credit card to include any card or credit device that may be used from time to time to obtain credit. Comment 2(a)(15)–2 provides examples of cards and devices that are and are not credit cards. The comment would be revised to include additional examples of cards or devices that are credit cards, addressing recent programs where cards are marketed from the outset with both credit and non-credit features.

2(a)(18) Downpayment. Comment 2(a)(18)–3 provides guidance on how a creditor discloses the downpayment if a trade-in is involved in a credit sale transaction and if the amount of an existing lien exceeds the value of the trade-in. The comment would be revised to provide additional examples when the downpayment also includes a cash payment.

Subpart B—Open-end Credit

Section 226.12—Special Credit Card Provisions

12(a) Issuance of Credit Cards. 12(a)(1). Section 226.12(a) prohibits creditors from issuing credit cards except in response to a consumer's request or application for the card or as a renewal of, or substitute for, a previously accepted credit card. The prohibition addresses various concerns including the potential for theft and fraud and the consumer inconvenience of refuting claims of liability.

The law does not prohibit creditors from issuing unsolicited cards that have a non-credit purpose—such as check-guarantee or purchase price-discount cards, so long as they cannot be used also to obtain credit. Consumers may later be able to convert these cards to credit cards if the issuer makes a credit feature available and the consumer requests the credit.

Comment 12(a)(1)–7 provides guidance regarding a card that is issued and accepted by the consumer as a non-credit device and that subsequently is converted for use as a credit device at the consumer's request. The comment would be revised to reflect more clearly its intended purpose. For example, a purchase-price discount card may be issued on an unsolicited basis if the card issuer does not propose to connect the card with any credit plan. If the issuer later establishes a credit plan to which the card could be connected and the consumer requests access to the plan, the previously issued card can be re-encoded (or the issuer may reprogram its computers to allow the card to be used to access credit) without violating TILA.

Questions about the comment's meaning have been raised regarding its application to recent programs where unsolicited cards are marketed from the outset as both stored-value cards and credit cards. The revised comment would clarify that, because these multifunction cards are connected with credit plans when they are issued, and thus are credit cards, these cards may not be sent without the consumer's prior request or application. See comment 2(a)(15)–2. To the extent that the interpretation of rule previously may have been unclear, the Board believes that liability should not attach to a card issuer's prior reliance on comment 12(a)(1)–7 in issuing multifunction cards that included a credit feature.

Section 226.14—Determination of Annual Percentage Rate

14(c) *Annual Percentage Rate for Periodic Statements.* Comment 14(c)–10 addresses finance charges that are imposed during the current billing cycle but that relate to account activity that occurred during a prior billing cycle. The comment refers expressly to current-cycle and prior-cycle debits but not to current-cycle or prior-cycle credits. The comment is meant to cover both debits and credits, and would be revised accordingly.

Subpart C—Closed-end Credit

Section 226.18—Content of Disclosures

18(g) Payment Schedule. The Homeowners Protection Act of 1998 (HPA) limits the amount of private mortgage insurance consumers can be required to purchase. Borrowers may request cancellation of private mortgage insurance under some circumstances and lenders must terminate private mortgage insurance automatically when certain conditions are met. For example, creditors must stop collecting insurance premiums when the outstanding loan balance is 78 percent of the original value of the property provided the account is current (unless the mortgage is "high-risk" as defined in the statute).

Comment 18(g)–5 would be added in response to creditors' requests for guidance on how the requirements of the HPA affect TILA disclosures. TILA disclosures are based on the legal obligation between the parties. (See § 226.17(c)(1).) The payment schedule disclosure required by section 18(g) should reflect all components of the finance charge, including private mortgage insurance for the time period there is a legal obligation to maintain the insurance.

18(j) Total Sale Price. Comment 18(j)–2 provides the formula for calculating the total sale price in a credit sale transaction. In response to requests for guidance, the comment would be revised to address how the total sale price may be affected by downpayments involving cash and property that is being used as a trade-in and that has a lien exceeding the value of the trade-in.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1029, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with **Federal Register** publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 226 as follows:

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, under *Section 226.2—Definitions and Rules of Construction*, the following amendments would be made:

a. Under *Paragraph 2(a)(15) Credit card.*, paragraph 2. would be revised; and

b. Under *Paragraph 2(a)(18) Downpayment.*, paragraph 3. would be revised.

The revisions would read as follows:

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Supplement I—Official Staff Interpretations

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Subpart A—General

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§ 226.2 Definitions and rules of construction

2(a) Definitions.

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2(a)(15) Credit card.

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2. Examples. i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.

B. A card that accesses both a credit and an asset account (that is, a debit card).

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

►E. A card or device that can be activated upon receipt to access credit, notwithstanding the fact that the recipient must first contact the card issuer before using the card.

F. A card that has a substantive use other than credit, such as a purchase-price discount card, if the card also may be used to obtain credit (even if the recipient must first contact the card issuer to access or activate the credit feature).◄

ii. In contrast, a credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

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2(a)(18) Downpayment.

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3. *Effect of existing liens.* In a credit sale, the "downpayment" may only be used to reduce the cash price. For example, when the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not -$2,000. ►Similarly, if the consumer pays $1,500 in cash (which does not extinguish the $2,000 deficit) the creditor should disclose a downpayment of $0, not -$500. But if the consumer provides $3,000 in cash (which eliminates the $2,000 deficit and contributes $1,000 to reduce the cash price), the creditor should disclose a downpayment of $1,000.◄

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3. In Supplement I to Part 226, under *Section 226.12—Special credit card provisions*, under *Paragraph 12(a)(1)*, paragraph 7. would be revised to read as follows:

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Subpart B—Open-End Credit

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§ 226.12 Special credit card provisions

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12(a) Issuance of credit cards.

Paragraph 12(a)(1)

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7. *Issuance of non-credit cards.* ►i. *General.* Under 12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A credit feature may be added to a previously issued non-credit card only upon the consumer's specific request. Adding a credit feature includes re-encoding the non-credit device, or reprogramming the issuer's computer program or automated teller machines.

ii. *Examples.* Purchase-price discount cards may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. If the issuer subsequently establishes a credit plan that could be accessed by the card, it may solicit customers who have received the discount cards to offer them the credit feature, and may then reprogram its computers to provide credit access to consumers who request activativation of the credit feature.◄

[The issuance of an unsolicited device that is not, but may become, a credit card, is not prohibited provided:

- The device has some substantive purpose other than obtaining credit, such as access to non-credit services offered by the issuer;
- It cannot be used as a credit card when issued; and
- A credit capability will be added only on the recipient's request.

For example, the card issuer could send a check guarantee card on an unsolicited basis, but could not add a credit feature to that card without the consumer's specific request. The re-encoding of a debit card or other existing card that had no credit privileges when issued would be appropriate after the consumer has specifically requested a card with credit privileges. Similarly, the card issuer may add a credit feature, for example, by reprogramming the issuer's computer program or automated teller machines, or by a similar program adjustment.]

* * * * *

4. In Supplement I to Part 226, *Section 226.14—Determination of Annual Percentage Rate*, under *Paragraph 14(c) Annual percentage rate for periodic statements.*, paragraph 10.ii. is republished and paragraph 10.ii.B. would be revised to read as follows:

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§ 226.14 Determination of annual percentage rate

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14(c) Annual percentage rate for periodic statements.

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10. *Prior-cycle adjustments.*

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ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

* * * * *

B. If a finance charge ►that is posted◄ [debited] to the account relates to activity for which a finance charge was debited ►or credited◄ to the account in a previous billing cycle, for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons, the creditor shall at its option:

1. Calculate the annual percentage rate in accord with ii.A. of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

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5. In Supplement I to Part 226, under *§ 226.18—Content of disclosures*, the following amendments would be made:

a. Under *18(g) Payment schedule.*, a new paragraph 5. would be added; and

b. Under *18(j) Total sale price.*, paragraph 2. would be revised.

The addition and revision would read as follows:

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Subpart C—Closed-End Credit

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§ 226.18 Content of disclosures

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18(g) Payment schedule.

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►5. *Mortgage insurance.* The payment schedule should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier.◄

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18(j) Total sale price.

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2. *Calculation of total sale price.* The figure to be disclosed is the sum of the cash price, other charges added under § 226.18(b)(2), and the finance charge disclosed under § 226.18(d). ►When a credit sale transaction involves property that is being used as a trade-in (an automobile, for example) and that has a lien exceeding the value of the trade-in, the total sale price is affected by the amount of any cash provided. To illustrate, assume a consumer finances the purchase of an automobile with a cash price of $20,000. The consumer owes $10,000 on an existing loan on an automobile with a trade-in value of $8,000, leaving a $2,000 deficit that the consumer must finance. If the consumer pays $3,000 in cash and no other costs are financed, the total sale price would be the sum of the $20,000 cash price and the finance charge; because the $3,000 cash payment extinguishes the $2,000 trade-in deficit no charges are added under § 226.18(b)(2). (The remaining $1,000 is a downpayment, which does not affect the total sales price.) However, if the cash payment were $1,500, the total sale price would be the sum of the $20,000 cash price, an additional $500 financed under § 226.18(b)(2) (the $2,000 deficit reduced by the $1,500 cash payment), and the finance charge.◄

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By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 1, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32339 Filed 12–4–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1030]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of adjustment of dollar amount.

SUMMARY: The Board is publishing an adjustment to the dollar amount that triggers certain requirements of Regulation Z (Truth in Lending) for mortgages bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index that is in effect on June 1. For 1999, the adjusted dollar amount is $441.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf *only,* please contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601–1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226).

On March 24, 1995, the Board published amendments to Regulation Z implementing the Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, which became effective on October 1, 1995, are contained in § 226.32 of the regulation and impose additional disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the rules in § 226.32 if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (15 U.S.C. 1602(aa)(3)) and section 226.32(a)(1)(ii) The Board adjusted the $400 amount to $412 for 1996, to $424 for 1997, and to $435 for 1998.

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not "report" a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI–U index, which is based on all urban consumers and represents approximately 80 percent of the U.S. population, as the index for adjusting the $400 dollar figure. The adjustment to the CPI–U index reported by the Bureau of Labor Statistics on May 15, 1998, was the CPI–U index "in effect" on June 1, and reflects the percentage increase from April 1997 to April 1998. The adjustment to the $400 figure below reflects a 1.4 percent increase in the CPI–U index for this period.

Adjustment

For the reasons set forth in the preamble, for purposes of determining whether a mortgage transaction is covered by § 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $441 or 8 percent of the total loan amount, effective January 1, 1999.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 2, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32460 Filed 12–7–98; 8:45 am]

BILLING CODE 6210–01–P