

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1389]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation Z (Truth in Lending). The Board is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) 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. In keeping with the statute, the Board has annually adjusted the \$400 amount based on the annual percentage change reflected in the Consumer Price Index as reported on June 1. The adjusted dollar amount for 2011 is \$592.

EFFECTIVE DATE: January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Dana Miller, Senior 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 (“TDD”) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. 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). 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.

In 1995, the Board published amendments to Regulation Z implementing 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, contained in §§ 226.32 and 226.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed-end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA requirements 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 12 CFR 226.32(a)(1)(ii). The Board adjusted the \$400 amount to \$579 for the year 2010.

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 87 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 19, 2010, was the CPI-U index in effect on June 1, and reflects the percentage change from April 2009 to April 2010. The adjustment to the \$400 figure below reflects a 2.2 percent increase in the CPI-U index for this period and is rounded to whole dollars for ease of compliance.

The fee trigger being adjusted in this Federal Register notice pursuant to TILA section 103(aa) is used in determining whether a loan is covered by section 226.32 of Regulation Z. Such loans have generally been known as “HOEPA loans.” In July 2008, the Board revised Regulation Z to adopt additional protections for “higher-priced” loans, using its authority under TILA section 129(1)(2). Those revisions define a class of dwelling-secured transactions, described in section 226.35 of Regulation Z, using a threshold based on average market rates that the Board publishes on a regular basis. The adjustment published today does not affect the triggers adopted in July 2008 for higher-priced loans.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Reform Act”) was enacted into law.¹ Section 1431 of the Reform Act revises the statutory fee trigger for HOEPA loans. The amendments made by Section 1431 of the Reform Act will be implemented in a future rulemaking. Accordingly, the adjustment to the fee trigger that is being published today will become effective on January 1, 2011 and will apply for one year, or until final rules under the Reform Act become effective, whichever is earlier.

II. Adjustment and Commentary Revision

Effective January 1, 2011, for purposes of determining whether a home mortgage transaction is covered by 12 CFR 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

¹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

greater of \$592 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)-2, which lists the adjustments for each year, is amended to reflect the dollar adjustment for 2011. Because the timing and method of the adjustment are set by statute, the Board finds that notice and public comment on the change are unnecessary.

III. Regulatory Flexibility Analysis

The Board certifies that this amendment to Regulation Z will not have a significant economic impact on a substantial number of small entities. The only change is to increase the threshold for transactions requiring HOEPA disclosures. This change is mandated by statute.

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 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, under Section 226.32---Requirements for Certain Closed-End Home Mortgages, under Paragraph 32(a)(1)(ii), paragraph 2.xvi. is added.

SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

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SUBPART E—SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

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Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

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Paragraph 32(a)(1)(ii)

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2. Annual adjustment of \$400 amount.

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xvi. For 2011, \$592, reflecting a 2.2 percent increase in the CPI-U from June 2009 to June 2010, rounded to the nearest whole dollar.

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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,
July 29, 2010.

Jennifer J. Johnson (signed)

Jennifer J. Johnson,
Secretary of the Board.