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FEDERAL RESERVE SYSTEM

[Docket No. R–1366]

12 CFR Part 226

Regulation Z; Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is publishing final revisions to the official staff commentary to Regulation Z, which implements the Truth in Lending Act (TILA). The commentary applies and interprets the requirements of Regulation Z. The Board is revising the commentary so that it accurately reflects the effective date of a final rule on loan originator compensation practices that was published in the **Federal Register** on September 24, 2010. At the time the final rule on loan originator compensation was issued, the Board intended it to become effective on April 1, 2011. However, on March 31, 2011, the United States Court of Appeals for the District of Columbia Circuit entered an administrative stay to temporarily delay implementation of the final rule. The administrative stay was in effect from April 1, 2011, until it was dissolved on April 5, 2011. Accordingly, the commentary is being revised to reflect that compliance with the final rule on loan originator compensation was not mandatory until April 6, 2011.

DATES: *Effective Date:* This final rule is effective July 20, 2011.

FOR FURTHER INFORMATION CONTACT: Lorna Neill or Nikita Pastor, Senior Attorneys, (202) 452–3667, Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, 20th and C Streets, NW., Washington, DC 20551. For users of a Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthen by the informed use of credit resulting from consumers' awareness of the cost of credit. TILA directs the Board to prescribe regulations to carry out its purposes. *See* 15 U.S.C. 1604(a). In 1994, TILA was amended by the Home Ownership and Equity Protection Act (HOEPA). Among other things, HOEPA directs the Board to prohibit, by regulation or order, acts or practices in connection with mortgage loans that the Board finds to be unfair or deceptive. *See* 15 U.S.C. 1639(l)(2).

TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. *See* 12 CFR part 226 (Supp. I). Good faith compliance with the commentary affords protection from liability pursuant to section 130(f) of TILA (15 U.S.C. 1640(f)). The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

On September 24, 2010, the Board published a final rule amending Regulation Z to prohibit certain practices related to mortgage loan originator compensation (the September 2010 final rule). *See* 75 FR 58509, Sept. 24, 2010. The purpose of the final rule is to protect consumers in the mortgage market from unfair or abusive practices that can arise from certain loan originator compensation practices, while preserving responsible lending and sustainable homeownership. The September 2010 final rule prohibits payments to loan originators (which include mortgage brokers and loan officers) based on the terms or conditions of the transaction other than the amount of credit extended. The rule also prohibits any person other than the consumer from paying compensation to a loan originator in a transaction where the consumer pays the loan originator directly. Under the September 2010 final rule, loan originators are prohibited from steering consumers to consummate a loan not in their interest based on the fact that the loan originator will receive greater compensation for that loan.

II. Summary of the Revisions

At the time the September 2010 final rule on loan originator compensation was issued, it had an effective date of April 1, 2011. The commentary accompanying the final rule clarified that it would apply to closed-end transactions secured by a dwelling where the creditor receives a loan application on or after April 1, 2011. *See* comment 36–2. However, on March 31, 2011, the United States Court of Appeals for the District of Columbia Circuit issued an administrative stay to temporarily delay implementation of the September 2010 final rule. (Case No. 11–5078). Consequently, compliance with the final rule on loan originator compensation was not mandatory on April 1, 2011, as originally intended. That administrative stay was dissolved by the Court on April 5, 2011.[1]

Accordingly, the Board is revising the commentary so that it conforms to the Court's administrative stay. Based on the Court's order, during the period from April 1, 2011 to April 5, 2011, compliance with the September 2010 final rule on loan originator compensation was not required. Comment 36–2 is revised based on the fact that the mandatory compliance date was April 6, 2011. The example in comment 36–2 has also been revised to conform to the Court's order.

III. Authority To Issue Final Rule That Is Effective Immediately Without Notice and Comment

The Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq.,* generally requires public notice before promulgation of regulations. *See* 5 U.S.C. 553(b). Unless public notice or a hearing is specifically required by statute, however, the APA also provides exceptions ''for interpretative rules'' and ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public

[1] The administrative stay was issued in connection with two lawsuits, filed by organizations representing mortgage loan originators, challenging the Board's authority to issue the September 2010 final rule. Both lawsuits were subsequently dismissed.

procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(A) and (B). The APA also requires that rules generally be published not less than 30 days before their effective date. *See* 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA provides an exception when ''otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3).

TILA does not require Board to provide notice or a hearing with respect to this rulemaking. *See* TILA Section 105(a), 15 U.S.C. 1604(a). The revisions made to the commentary by this final rule are interpretative and merely explain that the April 1, 2011, mandatory compliance date that was specified in September 2010 was subsequently changed as a result of the Court's issuance of a temporary administrative stay. The Board finds that there is good cause to conclude that providing notice and an opportunity to comment before issuing this final rule is unnecessary and that there is good cause for the final rule to be effective immediately. The change that is noted in this final rule has already occurred as a result of the Court's prior order. The final rule merely makes conforming changes so that the commentary accurately reflects the effect that the Court's order had on mandatory compliance date.

List of Subjects in 12 CFR Part 226

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

Text of Final Revisions

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, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 2. In Supplement I to part 226, in Subpart E, under *Section 226.36—Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling,* revise paragraph 2 to read as follows:

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 226.36—Prohibited Acts or Practices in Connection with Credit Secured by a Dwelling

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2. *Mandatory compliance date for §§ 226.36(d) and (e).* The final rules on loan originator compensation in § 226.36 apply to transactions for which the creditor receives an application on or after the effective date. For example, assume a mortgage broker takes an application on March 10, 2011, which the creditor receives on March 25, 2011. This transaction is not covered. If, however, the creditor does not receive the application until April 8, 2011, the transaction is covered.

* * * * *

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 14, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–18215 Filed 7–19–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No.: FAA–2010–0326; Amendment No. 187–35]

RIN 2120–AJ68

Update of August 2001 Overflight Fees

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule updates existing Overflight Fees using more current FAA cost accounting data and air traffic activity data. Overflight Fees are charges for aircraft flights that transit U.S.-controlled airspace, but neither land in nor depart from the United States. These fees have not been updated in nearly a decade and are based upon 1999 cost accounting and activity data. This action is necessary because operational costs have increased steadily since the fees were last updated. This adjustment of Overflight Fees will result in an increased level of cost recovery for the services being provided.

DATES: Effective October 1, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule, contact David Rickard, Office of Financial Controls, Financial Analysis Division (AFC 300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–5480; e-mail to *david.rickard@FAA.gov.*

For legal questions concerning this final rule contact Michael Chase, AGC–240, Office of Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3110; e-mail to *michael.chase@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to establish these fees is found in Title 49 of the United States Code. This rulemaking has been conducted under the authority described in Chapter 453, Section 45301 *et seq.* Under that Chapter, the FAA is charged with prescribing regulations for the collection of fees for air traffic control and related services provided to aircraft, other than military and civilian aircraft of the United States Government or a foreign government, that transit U.S.-controlled airspace, but neither take off from nor land in the United States (''Overflights''). This final rule is within the scope of that authority.

Background

The FAA's Overflight Fees were initially authorized in the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264, enacted October 9, 1996). Following enactment of the initial fee authority, and as mandated by that authority, the FAA issued an Interim Final Rule (IFR), ''Fees for Air Traffic Services for Certain Flights through U.S.-Controlled Airspace'' (62 FR 13496), on March 20, 1997. Under the terms of the IFR, the FAA sought public comment on the IFR while concurrently beginning to assess Overflight Fees 60 days after its publication, on May 19, 1997.

On July 17, 1997, petitions for judicial review of the IFR were filed in the U.S. Court of Appeals for the District of Columbia (the Court) by the Air Transport Association of Canada (ATAC) and seven foreign air carriers. Those petitions were consolidated into a single case (*Asiana Airlines* v. *FAA,* 134 F.3d 393 (DC Cir. 1998)). The litigation proceeded throughout the remainder of 1997 while the FAA continued to collect fees pursuant to the statute.

On January 30, 1998, the Court issued a decision, upholding the FAA on three process and procedure issues, but vacating the Rule because the Court