

# RESCINDED

Office of Thrift Supervision

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Department of the Treasury

**Transmittal**

**TR-335**

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**Number TR-335**

The Federal Reserve Board published the attached final rule regarding Regulation Z, Truth In Lending on August 25, 2003.

# Rules and Regulations

Federal Register

Vol. 68, No. 164

Monday, August 25, 2003

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

[Regulation Z; Docket No. R-1157]

#### 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 that is in effect on June 1. The adjusted dollar amount for 2004 is \$499.

**DATES:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Minh-Duc T. Le, 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 ("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 rules 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 \$488 for the year 2003.

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, 2003, was the CPI-U index "in effect" on June 1, and reflects the percentage increase from April 2002 to April 2003. The adjustment to the \$400 figure below reflects a 2.22 percent increase in the CPI-U index for this period and is rounded to whole dollars for ease of compliance.

## II. Adjustment and Commentary Revision

Effective January 1, 2004, 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 greater of \$499 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 2004. Because the timing and method of the adjustment is 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 will not have a substantial effect on regulated entities because the only change is to raise the threshold for transactions requiring HOEPA disclosures.

### 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. ix. is added.

### SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

\* \* \* \* \*

#### Subpart E—Special Rules for Certain Home Mortgage Transactions

\* \* \* \* \*

*Section 226.32—Requirements for Certain Closed-End Home Mortgages*

*32(a) Coverage*  
\* \* \* \* \*

Paragraph 32(a)(1)(ii)

\* \* \* \* \*  
 2. Annual adjustment of \$400 amount. \* \* \*

ix. For 2004, \$499, reflecting a 2.22 percent increase in the CPI-U from June 2002 to June 2003, rounded to the nearest whole dollar.

\* \* \* \* \*  
 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, August 18, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03-21569 Filed 8-22-03; 8:45 am]

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 3**

RIN 2900-AL37

**Effective Dates of Benefits for Disability or Death Caused By Herbicide Exposure; Disposition of Unpaid Benefits After Death of Beneficiary**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is adding a new provision to its adjudication regulations concerning certain awards of disability compensation and dependency and indemnity compensation (DIC). The new rule explains that certain awards of disability compensation or DIC made pursuant to liberalizing regulations concerning diseases presumptively associated with herbicide exposure may be made effective retroactive to the date of the claim or the date of a previously denied claim, even if such date is earlier than the effective date of the regulation establishing the presumption. The new rule also provides that VA may pay to certain survivors of a deceased beneficiary, or to the beneficiary's estate, any amounts the beneficiary was entitled to receive under the effective-date provisions of this rule, but which were not paid prior to the beneficiary's death. The purpose of this rule is to reflect the requirements of court orders in a class-action case.

**DATES:** Effective Date: September 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** David Barrans, Staff Attorney (022), Office of General Counsel, Department

of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-6332.

**SUPPLEMENTARY INFORMATION:** On January 28, 2003, VA published in the **Federal Register** (68 FR 4132), a proposed rule to establish provisions at 38 CFR 3.816 explaining certain rules arising from court orders in the class action litigation in *Nehmer v. United States Department of Veterans Affairs*, No. CV-86-6160 TEH (N.D. Cal.). As explained in that notice, the rule is intended to explain two exceptions to generally-applicable adjudication rules that have resulted from the *Nehmer* court orders.

First, this rule will clarify the standards governing the effective dates of disability compensation or dependency and indemnity compensation (DIC) awarded to *Nehmer* class members under liberalizing regulations establishing presumptions that certain diseases are associated with herbicide exposure in service. That change is necessary to address an apparent conflict between 38 U.S.C. 5110(g), which generally prohibits VA from awarding retroactive effective dates that precede the date a liberalizing regulation took effect, and the *Nehmer* court orders, which require VA to assign such retroactive effective dates for certain awards to *Nehmer* class members. The new rule explains that, when VA awards disability compensation or DIC to a *Nehmer* class member based on a VA regulation issued under the Agent Orange Act of 1991, Pub. L. 102-4, establishing a presumption that a disease is associated with herbicide exposure, VA will assign an effective date for the award that corresponds to the date the claim was received or to the date of a previously-denied claim based on the same disease, without regard to the provisions of 38 U.S.C. 5110(g).

Second, this rule will clarify that, when a *Nehmer* class member dies before receiving payment to which he or she is entitled under the *Nehmer* court orders, VA will pay the entire amount of such unpaid benefits to certain survivors or to the class member's estate if there are no such survivors. This change is necessary to address an apparent conflict between 38 U.S.C. 5121(a), which, in some circumstances, prohibits VA from paying amounts that had accrued for periods more than two years prior to the beneficiary's death, and the *Nehmer* court orders, which require VA to pay the entire amount of any unpaid benefits to the survivors or estate of a deceased *Nehmer* class member. Further, although section

5121(a) requires payment to the person who bore the expense of the beneficiary's last sickness and burial if there are no surviving members of the decedent's immediate family, the *Nehmer* court orders require payment to the decedent's estate in that circumstance. This rule will provide that, in cases governed by the *Nehmer* court orders, VA will pay the entire amount of such benefits to the specified survivors or to the decedent's estate, without regard to the two-year limit in 38 U.S.C. 5121(a).

We received comments on the proposed rule from three commenters. One commenter expressed unqualified support for the rule. The other commenters expressed general support for the rule, but disagreed with certain aspects of it, as discussed below.

**Burial Benefits**

Two commenters suggested that we add provisions to the rule specifying that when service connection for the cause of a *Nehmer* class member's death is established under a presumption issued pursuant to the Agent Orange Act, VA may pay a service-connected burial allowance under 38 U.S.C. 2307, even if the death occurred prior to the effective date of the regulation establishing the presumption. Those suggestions are based on a 1995 opinion of VA's General Counsel, designated as VAOPGCPREC 15-95, which stated such a conclusion in the context of a *Nehmer* class member's claim.

We make no change based on these comments. The additional provisions suggested by the commenters do not relate to the effective date of awards of disability compensation or DIC, nor to the manner of paying amounts due and unpaid to a beneficiary at death. Rather, they pertain to a distinct issue concerning entitlement to service-connected burial benefits under 38 U.S.C. 2307. Because these comments relate solely to matters outside the scope of the rule we proposed, we will make no change based on them.

Moreover, unlike the subjects of our proposed rule, the General Counsel's conclusion regarding entitlement to service-connected burial benefits does not rest upon the requirements of the *Nehmer* court orders, nor does it establish an exception to the generally applicable adjudication rules. In our January 2003 notice of proposed rule making, we explained that the purpose of the proposed rule was to explain the requirements of the *Nehmer* court orders, which created exceptions to the general statutory prohibitions in 38 U.S.C. 5110(g) and 5121(a) applicable to *Nehmer* class members. The General