

Memo

To: Bill Mitchell
From: Kris Welch
Date: April 2, 2004
Re: Federal Reserve Board's proposed amendments

I am pleased to provide you my comments on the Federal Reserve Board's proposed amendments to Regulations Z, B, E, M and DD and their respective Official Staff Commentaries. In addition the proposal to Regulation Z includes several technical revisions to the staff Commentary.

The proposal makes the form of disclosures consistent among various consumer protection regulations. Specifically, it adopts the "clear and conspicuous" standard, along with examples currently contained in the Commentary to Reg P (GLBA).

These proposals are unworkable and implementation will impose huge costs on the banking industry. The subjectivity of the proposals in my opinion will make compliance uncertain and will open the door for expensive lawsuits without improving the disclosures in any meaningful way.

- **Burden on all institutions:**

The proposals will impose significant costs to every financial institution. If the proposals were adopted, financial institutions will have to review every single consumer financial product document and advertisement containing required disclosures. For every bank this means reviewing hundreds of agreements, forms, statements, web pages, telephone scripts and radio advertisements.

Once identified the required disclosures will have to be segregated from non-required disclosures, analyzed and revised. The revision effort may be time-consuming and expensive as staff and lawyers debate "everyday word" what are they?

As the new terminology is decided the financial institutions must attempt to format the new disclosures and address software demands. Software programs will have to be modified and in many places replaced; they will not be usable as the new disclosures will no longer fit in the original data fields.

Staff training would need to be conducted as well as modifying all training and audit materials.

For small institutions the challenge could be overwhelming. The staff in a small institution wears many hats beyond compliance. They will be less able to manage those other bank functions while working on new compliance programs or even yet not work on the required changes. Ultimately, the costs of compliance, no matter what size the institution, add to the consumers' price.

I believe that the proposed changes will become a magnet for new lawsuits by provoking litigation by providing a clear basis for challenging compliance.

Remembering Regulation P (GLBA) it took many months to determine and put in effect the bank's privacy policy. Even the changes to Regulation Z several years ago, which changed the format on credit card solicitation disclosures I sure was costly to the affected institutions.

- **General approach/flexibility:**

Financial institutions will never be certain whether they comply with the requirements because every disclosure can always be challenged by citing one or all of the "examples". In many cases the proposed "examples:" will not improve consumer understanding.

- **Regulation P is different from the consumer protection regulations:**

The privacy policy disclosures of Regulation P and those of the typical consumer protection regulations are different. Reg P requires a financial institution to convey an institution's general policy on a single matter that applies to all its' products. In contrast, the disclosures of the consumer protection regulations convey complex, sometimes abstract and often detailed terms that are unique to that account. In many cases, legal and technical terms are necessary, legal language is essential in order for the agreement to be enforceable and technical language to be accurate as required in the regulation. "Everyday" terms will change their meaning.

- **Provisions to Regulation Z:**

The Board proposes to add an interpretative rule of construction stating that where the word "amount" is used to describe a disclosure requirement, it refers to a numerical amount throughout Regulation Z. I believe the proposed interpretation is intended to address a court decision regarding the disclosure of payments scheduled to repay a closed-end transaction. I personally don't believe this would negatively impact any financial institutions.

The other proposed comment would be to revise the address situations where a creditor fails to provide the required right of rescission form or designate an address for sending the notice to. The proposed comment would provide that in such cases, if a consumer sends the notice to someone other than the creditor or assignee, such as a third-party servicer acting as the creditor's agent, the consumer's notice of rescission may be effective if under the applicable state law this would constitute delivery. The effect of this would be minimal.

Summary:

While making disclosures more understandable for consumers is an important goal, the Board does not identify a problem with the existing disclosure requirements. The Board states that its goal is to facilitate compliance and ensure consumer understanding of the regulations. This apparently is to be achieved through standardization of disclosure requirements. While banks will definitely appreciate consistency among the regulations, any additional regulatory burden should be justified by a real need.

Making disclosures more uniform between the six regulations does not necessarily translate into improved understanding for consumers.