

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R-1400]

RIN 7100-AD60

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: Effective July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Consumer Leasing Act (CLA) by increasing the threshold for exempt consumer leases from \$25,000 to \$50,000. In addition, the Dodd-Frank Act provides that, on or after December 31, 2011, this threshold must be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers. Accordingly, the Board is proposing to make corresponding amendments to Regulation M, which implements the CLA, and to the accompanying staff commentary. Because the Dodd-Frank Act also increases the Truth in Lending Act's threshold for exempt consumer credit transactions from \$25,000 to \$50,000, the Board is proposing similar amendments to Regulation Z elsewhere in today's **Federal Register**.

DATES: Comments must be received on or before February 1, 2011. Comments on the Paperwork Reduction Act analysis set forth in Section V of this **Federal Register** notice must be received on or before February 14, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R-1400 and RIN No. 7100-AD60, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** regs.comments@federalreserve.gov. Include the docket number and RIN in the subject line of the message.

- **Facsimile:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Stephen Shin, Attorney, or Benjamin K. Olson, Counsel, 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, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act

The Consumer Leasing Act (CLA), 15 U.S.C. 1667-1667e, was enacted in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The purpose of the CLA is to ensure meaningful and accurate disclosure of the terms of personal property leases for personal, family, or household use. The CLA is implemented by the Board's Regulation M (12 CFR part 213).

The CLA and Regulation M require lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. They generally apply to consumer leases for the use of personal property in which the contractual obligation has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the CLA and Regulation M. However, if the lessee's total contractual obligation under the

lease exceeds \$25,000, the CLA and Regulation M do not apply. *See* 15 U.S.C. 1667(1); 12 CFR 213.2(e).¹

The Dodd-Frank Wall Street Reform and Consumer Protection Act

This proposed rule implements Section 1100E of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which was signed into law on July 21, 2010. Public Law 111-203 § 1100E, 124 Stat. 1376 (2010). The Dodd-Frank Act raises the CLA's \$25,000 exemption threshold to \$50,000. In addition, the Dodd-Frank Act requires that, on or after December 31, 2011, the threshold shall be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), as published by the Bureau of Labor Statistics. Therefore, from July 21, 2011 to December 31, 2011, the threshold dollar amount will be \$50,000. Beginning on January 1, 2012, the \$50,000 threshold will be adjusted annually based on any annual percentage increase in the CPI-W.

The Board is proposing to amend § 213.2(e), the accompanying commentary, and the commentary to § 213.7(a) for consistency with the amendments to the CLA's exemption threshold. In addition, because the Dodd-Frank Act makes similar amendments to TILA's exemption threshold for consumer credit transactions, the Board is proposing elsewhere in today's **Federal Register** to amend Regulation Z, which implements the provisions of TILA that do not address consumer leases.

Effective Date

Section 1100H of the Dodd-Frank Act provides that Section 1100E will become effective on the designated transfer date, as defined by Section 1062 of that Act. Section 1062 of the Dodd-Frank Act requires, in relevant part, the Secretary of the Treasury to designate a

¹ Specifically, the CLA currently defines a consumer lease as "a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding \$25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at expiration of the lease * * * 15 U.S.C. 1667(1) (emphasis added). Regulation M implements this definition in § 213.2(e).

single calendar date for the transfer of certain functions from other agencies to the Bureau of Consumer Financial Protection. Pursuant to Section 1062(a) of the Dodd-Frank Act, the Secretary of the Treasury has determined that the designated transfer date shall be July 21, 2011. *See* 75 FR 57252 (Sept. 20, 2010). Accordingly, because Section 1100E will become effective on July 21, 2011, the Board intends to make the amendments to Regulation M effective on that date.

Comment Period

The new threshold for exempt consumer leases in the CLA goes into effect on July 21, 2011. Accordingly, the Board must issue the final rule implementing the new threshold sufficiently in advance of July 21, 2011 to permit lessors to make the necessary changes to bring their systems and practices into compliance. To ensure that the Board has adequate time to analyze the comments received on the proposed rule, the Board is requiring that those comments be submitted by the later of February 1, 2011 or 30 days after publication of the proposal in the **Federal Register** (although comments on the Board's Paperwork Reduction Act analysis are not due until 60 days after publication). Because the proposal is narrow in scope, the Board believes that interested parties will have sufficient time to review the proposed rule and prepare their comments.

II. Statutory Authority

The CLA authorizes the Board to prescribe regulations to update and clarify the requirements and definitions applicable to lease disclosures and contracts, and any other issues specifically related to consumer leasing, to the extent that the Board determines such action to be necessary to carry out the CLA, to prevent circumvention, or to facilitate compliance. 15 U.S.C. 1667f(a). The CLA also provides that any regulations prescribed by the Board may contain classifications and differentiations, and may provide for adjustments and exceptions for any class of transactions, as the Board considers appropriate. *Id.* In addition, the CLA is a part of TILA, which grants similar authority to the Board. *See* 15 U.S.C. 1604(a) and (f). For the reasons discussed below, the Board believes it is necessary and appropriate to implement Section 1100E of the Dodd-Frank Act by revising Regulation M to effectuate the purposes of the CLA and TILA, to prevent circumvention, and to facilitate compliance.

III. Section-by-Section Analysis

Section 213.2—Definitions

2(e) Consumer Lease

Section 213.2(e) implements the CLA's definition of consumer lease. Currently, § 213(e)(1) defines "consumer lease" as "a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding \$25,000, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease." As discussed in existing comment 2(e)–3, the total contractual obligation under a lease includes the total of payments as well as non-refundable amounts the lessee is contractually obligated to pay to the lessor. However, comment 2(e)–3 also clarifies that residual value amounts, purchase-option prices, and amounts collected by the lessor but paid to a third party (such as taxes, licenses, and registration fees) are excluded from the total contractual amount.

In addition to increasing the threshold for an exemption from \$25,000 to \$50,000 effective July 21, 2011, Section 1100E of the Dodd-Frank Act provides that, beginning in 2012, the \$50,000 threshold will be further increased annually to reflect any increases in the CPI-W. Accordingly, whether the total contractual obligation under a consumer lease is sufficient to exempt that lease from the CLA will depend on the threshold amount in effect when the lease was consummated. For that reason, the Board is proposing to amend § 213.2(e)(1) to provide that a consumer lease is exempt if the total contractual obligation exceeds "the applicable threshold amount," which would be listed in the official staff commentary. The Board would further amend § 213.2(e)(1) to provide that the threshold amount will be adjusted annually to reflect increases in the CPI-W (as applicable).

The Board would adopt a new comment 2(e)–9 to clarify the method for determining the applicable threshold amount with respect to a particular lease. Specifically, this comment would clarify that a consumer lease is exempt from the requirements of Regulation M if the total contractual obligation exceeds the threshold amount in effect at the time of consummation.

Proposed comment 2(e)–9 would further clarify that the threshold amount in effect during a particular period of time is the amount stated in the

comment for that period. The comment would also note that the threshold amount will be adjusted effective January 1 of each year by any annual percentage increase in the CPI-W that was in effect on the preceding June 1. Once the annual percentage increase in the CPI-W in effect on June 1 becomes available, this comment will be amended to provide the threshold amount for the upcoming year. This approach is consistent with that adopted by the Board in other regulations that provide for annual adjustments based on a Consumer Price Index. *See, e.g.,* 12 CFR 226.32(a)(1)(ii) and its accompanying commentary. The Board believes this approach would facilitate compliance by permitting the publication of an increased threshold amount sufficiently in advance of the January 1 effective date.

In addition, new comment 2(e)–9 clarifies that any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900. This approach is consistent with Section 1100E(b) of the Dodd-Frank Act, which provides that annual CPI-W adjustments should be "rounded to the nearest multiple of \$100, or \$1,000, as applicable." The Board believes that Congress did not intend for an annual CPI-W adjustment to be rounded to the nearest \$100 in some circumstances but to the nearest \$1,000 in others, which could lead to anomalous results. Because \$1,000 is itself a multiple of \$100, the Board believes that the proposed commentary clarifies the statutory language in a manner consistent with the intent of Section 1100E.

Finally, the comment would clarify that, if a consumer lease is exempt from the requirements of Regulation M because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI-W. Thus, for example, if a lease with a total contractual obligation of \$30,000 was consummated in June 2010, that lease is exempt based on the \$25,000 threshold in effect at that time and would remain exempt after July 21, 2011, notwithstanding the increase in the threshold to \$50,000. Similarly, if a lease with a total contractual obligation

of \$55,000 is consummated in August 2011, that lease would be exempt based on the \$50,000 threshold in effect at that time and would remain exempt even if the threshold were subsequently increased to \$56,000 based on an increase in the CPI-W. This approach is consistent with § 213.3(e), which provides that events that occur after consummation of a consumer lease generally do not require the lessor to provide additional Regulation M disclosures. *See* comment 3(e)–2. The Board, however, solicits comment on any operational difficulties for open-end leases posed by this amendment.

Section 213.7—Advertising

7(a) General Rule

Section 213.7 imposes certain requirements on advertisements for consumer leases. In order to provide guidance regarding the interaction between § 213.7 and the definition of “consumer lease” in § 213.2(e), the Board proposes to adopt a new comment 7(a)–3. This comment would clarify that § 213.7 applies to advertisements for consumer leases, as defined in § 213.2(e). As discussed above, a lease is exempt from the requirements of Regulation M (including § 213.7) if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. Accordingly, proposed comment 7(a)–3 would clarify that § 213.7 does not apply to an advertisement for a specific consumer lease if the total contractual obligation for that lease exceeds the threshold amount in effect when the advertisement is made. If a lessor promotes multiple consumer leases in a single advertisement, the entire advertisement must comply with § 213.7 unless all of the advertised leases are exempt under § 213.2(e). The comment would also provide illustrative examples. The Board solicits comment on the proposed clarification and whether additional examples are needed.

IV. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires an agency to perform an initial and final regulatory flexibility analysis on the impact a rule is expected to have on small entities. However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant

economic impact on a substantial number of small entities. Based on its initial analysis and for the reasons stated below, the Board believes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the proposed rule.* The proposed rule would implement Section 1100E of the Dodd-Frank Act, which increases the total contractual obligation necessary to exempt a consumer lease from the Consumer Leasing Act (CLA) from more than \$25,000 to more than \$50,000, effective July 21, 2010. Section 1100E also provides that, beginning in 2012, this amount shall be increased annually to reflect any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The supplementary information above describes in detail the reasons, objectives, and legal basis for the proposed rule.

2. *Small entities affected by the proposed rule.* Currently, Regulation M applies to any person who regularly leases, offers to lease, or arranges for the lease of personal property primarily for personal, family, or household purposes, for a period exceeding four months, and for a total contractual obligation of \$25,000 or less. 12 CFR 213.2(e) and (h). Consistent with Section 1100E of the Dodd-Frank Act, the proposed rule would, beginning on July 21, 2011, apply Regulation M to any person who provides consumer leases for a total contractual obligation of \$50,000 or less, adjusted annually to reflect increases in the CPI-W.

Based on 2010 call report data, there are no banks with assets of \$175 million or less that engage in consumer leasing. In addition, the Board’s 2005 Finance Company Survey indicates that fewer than ten small finance companies engage in consumer leasing. The Board acknowledges, however, that the total number of small entities likely to be affected by the proposed rule is unknown, in part because it is unclear how many of the small entities currently engaged in consumer leasing offer leases with total contractual obligations of more than \$25,000 but not more than \$50,000. The Board invites comment on the effect of the proposed rule on small entities.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would not impose any new reporting requirements. However, the proposed rule would impose new recordkeeping requirements for small entities that offer consumer leases with total contractual obligations of more

than \$25,000 but not more than \$50,000. Regulation M requires lessors to retain evidence of compliance with its provisions (except the advertising requirements in § 213.7) for a period of not less than two years after the date the disclosures are required to be made or an action is required to be taken. 12 CFR 213.8. Thus, the proposed rule would require lessors to retain records for new consumer leases with total contractual obligations not exceeding \$50,000, adjusted annually to reflect increases in the CPI-W.

The proposed rule would also impose new compliance requirements for consumer leases with total contractual obligations of more than \$25,000 but not more than \$50,000. Specifically, for consumer leases subject to Regulation M, the lessor must provide certain disclosures regarding payments, liability, and other terms of the lease prior to consummation (§§ 213.3 and 213.4) and when the availability of consumer leases on particular terms is advertised (§ 213.7).

The Board understands that small entities that offer consumer leases generally have systems in place to provide the disclosures required by Regulation M and retain records of those disclosures, even if some of their leases are currently exempt. Thus, while the precise costs to small entities to provide disclosures and retain records for a larger population of leases are difficult to predict, the Board does not believe that the proposed rule would have a significant economic impact on a substantial number of small entities. However, the Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small entities.

4. *Other Federal rules.* The Board has not identified any Federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation M.

5. *Significant alternatives to the proposed revisions.* The proposed rule would implement Section 1100E of the Dodd-Frank Act, which goes into effect on July 21, 2011. As discussed in the supplementary information, the proposed rule would clarify that, if a consumer lease with a total contractual obligation exceeding \$25,000 is consummated prior to July 21, 2011, that lease remains exempt, notwithstanding subsequent increases in the threshold amount. The Board welcomes comment on any significant alternatives, consistent with Section 1100E of the Dodd-Frank Act, which would minimize the impact of the proposed rule on small entities.

V. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). In addition, as permitted by the PRA, the Board proposes to extend for three years the current recordkeeping and disclosure requirements in connection with Regulation M. The collection of information that is required by this rule is found in 12 CFR Part 213. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0202.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are lessors subject to Regulation M, including for-profit financial institutions and small businesses. Sections 105(a) and 187 of TILA (15 U.S.C. 1604(a) and 1667f) authorize the Board to issue regulations to carry out the provisions of the CLA. The CLA and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The act and regulation also contain rules about advertising consumer leases. The information collection pursuant to Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised. This information collection is mandatory.

Since the Board does not collect any information, no issue of confidentiality normally arises. However, in the event the Board were to retain records during the course of an examination, the information may be kept confidential pursuant to section (b)(8) of the Freedom of Information Act (5 U.S.C. 522 (b)(8)).

Regulation M applies to all types of lessors of personal property. The Board accounts for the paperwork burden associated with the regulation only for Board-supervised institutions. Appendix B of Regulation M defines the Board-supervised institutions as: State member banks, branches and agencies of

foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other Federal agencies account for the paperwork burden on other lessors for which they have administrative enforcement authority.

To ease the compliance cost (particularly for small entities) model forms are appended to the regulation. Lessors are required to retain evidence of compliance for 24 months, but the regulation does not specify types of records that must be retained.

The current annual burden to comply with the provisions of Regulation M is estimated to be 2 hours for each of the 4 State member banks² that engage in consumer leasing. Thus, the current total annual burden for all respondents is 8 hours.

The Board estimates that the proposed rule would impose a one-time increase in the total annual burden under Regulation M. The 4 respondents would take, on average, 40 hours (one business week) to update their systems to comply with the proposed requirements. This one-time revision would increase the total burden for all 4 respondents by 160 hours. On a continuing basis, the Board estimates that the 4 respondents would each take, on average, an additional 8 hours (one business day) annually to comply with the requirements, which would increase the ongoing total annual burden for all 4 respondents by 32 hours. Therefore, the total annual burden for all respondents is estimated to increase by 192 hours (from 8 to 200 hours) during the first year after a final rule is adopted. Thereafter, the ongoing total annual burden would be 40 hours.

The total burden increase represents averages for all respondents regulated by the Board. The Board expects that the amount of time required to implement each of the proposed changes for a given financial institution or entity may vary based on the size and complexity of the respondent.

The other Federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.³ They may, but are not

required to, use the Board's burden estimates. There are approximately 16,200 depository institutions of which the Board estimates that 58 depository institutions⁴ would be affected by this collection of information and considered respondents for purposes of the PRA. Using the Board's method, the total estimated annual burden for all financial institutions subject to Regulation M is currently approximately 116 hours. The proposed rule would impose a one-time increase in the estimated annual burden for the estimated 58 institutions thought to engage in consumer leasing by a total of 2,320 hours. On a continuing basis, the proposed rule would impose an increase in the estimated annual burden by a total of 464 hours. Thus, the total annual burden for the 58 institutions is estimated to increase by 2,784 hours (from 116 to 2,900 hours) during the first year after a final rule is adopted. Thereafter, the ongoing total annual burden would be 580 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. In addition, other institutions covered by Regulation M, such as retailers and finance companies potentially are affected by this collection of information, and thus are also respondents for purposes of the PRA.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated

enforce the regulation for particular classes of business. The Federal financial agencies other than the Federal Reserve include: the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA). The Federal non-financial agencies include: the Department of Transportation, the Grain Inspection, Packers, and Stockyards Administration (Department of Agriculture), the Farm Credit Administration, and the Federal Trade Commission.

⁴ Estimate is based on September 30, 2010, consumer lease data filed by depository institutions in their reports of condition and income: the commercial bank Call Report (FFIEC 031 & 041) (Federal Reserve OMB No. 7100-0036), (OCC OMB No. 1557-0081), and (FDIC OMB No. 3064-0052); the thrift institution Thrift Financial Report (TFR; form 1313) (OTS OMB No. 1500-0023); and the credit union NCUA Call Reports (form 5300) (NCUA OMB No. 3133-0004).

² Federal Financial Institutions Examination Council Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100-0036), Schedule RC-C, data item 10.a—Leases to individuals for household, family, and other personal expenditures.

³ Appendix B—Federal Enforcement Agencies—of Regulation M lists those Federal agencies that

collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503.

List of Subjects in 12 CFR Part 213

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

Text of Proposed Revisions

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

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 is revised to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 § 1100E, 124 Stat. 1376 ◀

2. Section 213.2(e)(1) is revised to read as follows:

§ 213.2 Definitions.

* * * * *

(e)(1) *Consumer lease* means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding ▶ the applicable threshold amount ◀ [\$25,000], whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. ▶ For purposes of this paragraph, the threshold amount is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official staff commentary to this paragraph for the threshold amount applicable to a specific consumer lease. ◀ Unless the context indicates otherwise, in this part “lease” means “consumer lease.”

* * * * *

3. In Supplement I to Part 213:

A. Under *Section 213.2—Definitions*, under *2(e) Consumer Lease*, paragraph 9. is added; and

B. Under *Section 213.7—Advertising*, under *7(a) General Rule*, paragraph 3. is added to read as follows:

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

Section 213.2—Definitions

2(e) Consumer Lease.

▶ 9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount is in effect during a particular time period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. This comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI–W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI–W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900. If a consumer lease is exempt from the requirements of this Part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI–W.

- i. Prior to July 21, 2011, the threshold amount is \$25,000.
- ii. From July 21, 2011 through December 31, 2011, the threshold amount is \$50,000. ◀

Section 213.7—Advertising

7(a) General Rule.

▶ 3. *Total contractual obligation of advertised lease.* Section 213.7 applies to advertisements for consumer leases, as defined in § 213.2(e). Under § 213.2(e), a consumer lease is exempt from the requirements of this Part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. See comment 2(e)–9. Accordingly, § 213.7 does not apply to an advertisement for a specific consumer lease if the total contractual obligation for that lease exceeds the threshold amount in effect when the advertisement is made. If a lessor promotes multiple consumer leases in a single advertisement, the entire advertisement must comply with § 213.7 unless all of the advertised leases are exempt under § 213.2(e). For example:

i. Assume that, in an advertisement, a lessor states that certain terms apply to a consumer lease for a specific automobile. The total contractual obligation of the advertised

lease exceeds the threshold amount in effect when the advertisement is made. Although the advertisement does not refer to any other lease, some or all of the advertised terms for the exempt lease also apply to other leases offered by the lessor with total contractual obligations that do not exceed the applicable threshold amount. The advertisement is not required to comply with § 213.7 because it refers only to an exempt lease.

ii. Assume that, in an advertisement, a lessor states certain terms (such as the amount due at lease signing) that will apply to consumer leases for automobiles of a particular brand. However, the advertisement does not refer to a specific lease. The total contractual obligations of the leases for some of the automobiles will exceed the threshold amount in effect when the advertisement is made, but the total contractual obligations of the leases for other automobiles will not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to terms for consumer leases that are not exempt.

iii. Assume that, in a single advertisement, a lessor states that certain terms apply to consumer leases for two different automobiles. The total contractual obligation of the lease for the first automobile exceeds the threshold amount in effect when the advertisement is made, but the total contractual obligation of the lease for the second automobile does not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to a consumer lease that is not exempt. ◀

By order of the Board of Governors of the Federal Reserve System, December 10, 2010.

Robert deV. Frierson,
Deputy Secretary of the Board.

[FR Doc. 2010–31530 Filed 12–15–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1399]

RIN 7100–AD59

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: Effective July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Truth in Lending Act (TILA) by increasing the threshold for exempt consumer credit transactions from \$25,000 to \$50,000. In addition, the Dodd-Frank Act provides that, on or after December 31, 2011, this threshold must be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage

collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503.

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§ 213.2 Definitions.

* * * * *

(e)(1) *Consumer lease* means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding ▶ the applicable threshold amount ◀ [\$25,000], whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. ▶ For purposes of this paragraph, the threshold amount is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official staff commentary to this paragraph for the threshold amount applicable to a specific consumer lease. ◀ Unless the context indicates otherwise, in this part “lease” means “consumer lease.”

* * * * *

3. In Supplement I to Part 213:

A. Under *Section 213.2—Definitions*, under *2(e) Consumer Lease*, paragraph 9. is added; and

B. Under *Section 213.7—Advertising*, under *7(a) General Rule*, paragraph 3. is added to read as follows:

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

Section 213.2—Definitions

2(e) Consumer Lease.

▶ 9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount is in effect during a particular time period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. This comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI–W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI–W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900. If a consumer lease is exempt from the requirements of this Part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI–W.

- i. Prior to July 21, 2011, the threshold amount is \$25,000.
- ii. From July 21, 2011 through December 31, 2011, the threshold amount is \$50,000. ◀

Section 213.7—Advertising

7(a) General Rule.

▶ 3. *Total contractual obligation of advertised lease.* Section 213.7 applies to advertisements for consumer leases, as defined in § 213.2(e). Under § 213.2(e), a consumer lease is exempt from the requirements of this Part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. See comment 2(e)–9. Accordingly, § 213.7 does not apply to an advertisement for a specific consumer lease if the total contractual obligation for that lease exceeds the threshold amount in effect when the advertisement is made. If a lessor promotes multiple consumer leases in a single advertisement, the entire advertisement must comply with § 213.7 unless all of the advertised leases are exempt under § 213.2(e). For example:

i. Assume that, in an advertisement, a lessor states that certain terms apply to a consumer lease for a specific automobile. The total contractual obligation of the advertised

lease exceeds the threshold amount in effect when the advertisement is made. Although the advertisement does not refer to any other lease, some or all of the advertised terms for the exempt lease also apply to other leases offered by the lessor with total contractual obligations that do not exceed the applicable threshold amount. The advertisement is not required to comply with § 213.7 because it refers only to an exempt lease.

ii. Assume that, in an advertisement, a lessor states certain terms (such as the amount due at lease signing) that will apply to consumer leases for automobiles of a particular brand. However, the advertisement does not refer to a specific lease. The total contractual obligations of the leases for some of the automobiles will exceed the threshold amount in effect when the advertisement is made, but the total contractual obligations of the leases for other automobiles will not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to terms for consumer leases that are not exempt.

iii. Assume that, in a single advertisement, a lessor states that certain terms apply to consumer leases for two different automobiles. The total contractual obligation of the lease for the first automobile exceeds the threshold amount in effect when the advertisement is made, but the total contractual obligation of the lease for the second automobile does not exceed the threshold. The entire advertisement must comply with § 213.7 because it refers to a consumer lease that is not exempt. ◀

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By order of the Board of Governors of the Federal Reserve System, December 10, 2010.

Robert deV. Frierson,
Deputy Secretary of the Board.

[FR Doc. 2010–31530 Filed 12–15–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1399]

RIN 7100–AD59

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: Effective July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Truth in Lending Act (TILA) by increasing the threshold for exempt consumer credit transactions from \$25,000 to \$50,000. In addition, the Dodd-Frank Act provides that, on or after December 31, 2011, this threshold must be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage

Earners and Clerical Workers.

Accordingly, the Board is proposing to make corresponding amendments to Regulation Z, which implements TILA, and to the accompanying staff commentary. Because the Dodd-Frank Act also increases the Consumer Leasing Act's threshold for exempt consumer leases from \$25,000 to \$50,000, the Board is proposing similar amendments to Regulation M elsewhere in today's **Federal Register**.

DATES: Comments must be received on or before February 1, 2011. Comments on the Paperwork Reduction Act analysis set forth in Section V of **SUPPLEMENTARY INFORMATION** must be received on or before February 14, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R-1399 and RIN No. 7100-AD59, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- **Facsimile:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Stephen Shin, Attorney, or Benjamin K. Olson, Counsel, 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, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act

This proposed rule implements Section 1100E of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which was signed into law on July 21, 2010. Public Law 111-203 § 1100E, 124 Stat. 1376 (2010). Section 1100E amends Section 104(3) of the Truth in Lending Act (TILA) by establishing a new threshold for exempt consumer credit transactions. Currently, TILA Section 104(3) exempts "[c]redit transactions, other than those in which a security interest is or will be acquired in real property, or in personal property used or expected to be used as the principal dwelling of the consumer, in which the total amount financed exceeds \$25,000." 15 U.S.C. 1603(3). Regulation Z implements this exemption in § 226.3(b).

Effective July 21, 2011, the Dodd-Frank Act raises TILA's \$25,000 exemption threshold to \$50,000. In addition, the Dodd-Frank Act provides that, on or after December 31, 2011, this threshold shall be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), as published by the Bureau of Labor Statistics. Therefore, from July 21, 2011 to December 31, 2011, the threshold dollar amount will be \$50,000. Beginning on January 1, 2012, the \$50,000 threshold will be adjusted annually based on any annual percentage increase in the CPI-W.

The Board is proposing to amend § 226.3(b) and the accompanying commentary for consistency with the amendments made by the Dodd-Frank Act. In addition, because the Dodd-Frank Act makes similar amendments to the exemption threshold in the Consumer Leasing Act (which is part of TILA), the Board is proposing elsewhere in today's **Federal Register** to amend Regulation M, which implements the Consumer Leasing Act.

Effective Date

Section 1100H of the Dodd-Frank Act provides that Section 1100E will become effective on the designated transfer date, as defined by Section 1062 of that Act. Section 1062 of the Dodd-Frank Act requires, in relevant part, the Secretary of the Treasury to designate a single calendar date for the transfer of certain functions from other agencies to the newly established Bureau of Consumer Financial Protection. Pursuant to Section 1062(a), the Secretary of the Treasury has

determined that the designated transfer date shall be July 21, 2011. See 75 FR 57252 (Sept. 20, 2010). Accordingly, because Section 1100E will become effective on July 21, 2011, the Board intends to make the amendments to Regulation Z effective on that date.

Comment Period

Because the new threshold for exempt consumer credit transactions in TILA Section 104(3) goes into effect on July 21, 2011, the Board must issue the final rule implementing the new threshold sufficiently in advance of that date to permit creditors to make the necessary changes to bring their systems and practices into compliance. To ensure that the Board has adequate time to analyze the comments received on the proposed rule, the Board is requiring that comments be submitted by the later of February 1, 2011 or 30 days after publication of the proposal in the **Federal Register** (although comments on the Board's Paperwork Reduction Act analysis are not due until 60 days after publication). Because the proposal is narrow in scope, the Board believes that interested parties will have sufficient time to review the proposed rule and prepare their comments.

II. Statutory Authority

TILA mandates that the Board prescribe regulations to carry out TILA's purposes and specifically authorizes the Board, among other things, to do the following:

- Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with that Act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).
- Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in TILA and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).

For the reasons discussed below, the Board believes that it is necessary and appropriate to make amendments to Regulation Z in order to effectuate the purposes of TILA, to prevent circumvention, and to facilitate compliance.

III. Section-by-Section Analysis

Section 226.3 Exempt Transactions

3(b) Credit Over Applicable Threshold Amount

Section 226.3(b) of Regulation Z implements the exemption for certain consumer credit transactions in TILA Section 104(3). Specifically, § 226.3(b) currently provides that Regulation Z does not apply to “[a]n extension of credit not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, in which the amount financed exceeds \$25,000 or in which there is an express written commitment to extend credit in excess of \$25,000.” Section 1100E(a)(1) of the Dodd-Frank Act increases the dollar amount of the exemption threshold in TILA Section 104(3) from \$25,000 to \$50,000. Furthermore, Section 1100E(b) requires that this amount be adjusted annually for inflation. Accordingly, the Board is proposing amendments to § 226.3(b) and the accompanying commentary to implement Section 1100E.

3(b)(1) General Exemption

As an initial matter, current § 226.3(b) would be redesignated as § 226.3(b)(1)(i) and a new § 226.3(b)(1)(ii) would be added to provide that the threshold amount will be adjusted annually to reflect any annual percentage increase in the CPI-W.¹ Because the threshold amount could change from year to year, § 226.3(b)(1)(i) would refer to the “applicable threshold amount,” rather than stating a specific amount. Instead, new § 226.3(b)(1)(ii) would explain that the threshold amount applicable to a specific extension of credit or express written commitment to extend credit is listed in the official staff commentary. The Board also proposes to revise and reorganize the commentary to § 226.3(b).²

Threshold Amount

Revised comment 3(b)–1 would list the threshold amount in effect for specific periods of time.³ In particular, the comment would clarify that, prior to July 21, 2011, the threshold amount is

\$25,000 and that, from July 21, 2011 through December 31, 2011, the threshold amount will be \$50,000. This comment would also explain that the threshold amount will be adjusted effective January 1 of each year by any annual percentage increase in the CPI-W that was in effect on the preceding June 1.⁴ The comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI-W that was in effect on the previous June 1 becomes available.

Revised comment 3(b)–1 further clarifies that any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900. This approach is consistent with Section 1100E(b) of the Dodd-Frank Act, which provides that annual CPI-W adjustments should be “rounded to the nearest multiple of \$100, or \$1,000, as applicable.” The Board believes that Congress did not intend for an annual CPI-W adjustment to be rounded to the nearest \$100 in some circumstances but to the nearest \$1,000 in others, which could lead to anomalous results. Because \$1,000 is itself a multiple of \$100, the Board believes that the proposed commentary clarifies the statutory language in a manner consistent with the intent of Section 1100E.

Open-End Credit

Revised comment 3(b)–2 would provide guidance on the application of § 226.3(b)(1) to open-end credit accounts. Consistent with the existing commentary, comment 3(b)–2.i would clarify that an open-end account qualifies for exemption under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer’s principal dwelling) if either: (1) The creditor

makes an initial extension of credit that exceeds the threshold amount in effect at the time the account is opened; or (2) the creditor makes a firm written commitment to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

In addition, the Board would clarify that the initial extension of credit or firm commitment must be made *at account opening* in order for an open-end account to be exempt under § 226.3(b). The Board understands that some open-end lines of credit associated with brokerage accounts are structured to be exempt under § 226.3(b) based on a requirement that the initial extension of credit must exceed \$25,000, even if that extension does not occur until months or years after account opening. The Board is concerned that this approach could produce uncertainty as to whether the account is exempt at account opening or only becomes exempt when the initial extension in excess of \$25,000 actually occurs. Currently, § 226.3(b) does not address when the initial extension of credit must occur for purposes of the exemption. Therefore, in order to provide greater certainty for consumers and creditors, the Board believes it is appropriate to determine whether an account is exempt under § 226.3(b) at account opening. The Board, however, solicits comment on any operational difficulties posed by this proposed guidance and whether greater flexibility would be appropriate.

Revised comment 3(b)–2.ii would provide general guidance regarding the effect of subsequent changes to an open-end account or the threshold amount on the account’s exempt status. Specifically, this comment would clarify which changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of Regulation Z within a reasonable period of time after the account ceases to be exempt (except as otherwise provided). For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. The Board

¹ The Board notes that, consistent with the Dodd-Frank Act, proposed § 226.3(b)(1)(ii) requires that the annual adjustment for inflation reflect the “annual percentage increase” in the CPI-W, as applicable. Therefore, an annual period of deflation or no inflation would not require a change in the threshold amount.

² For consistency with revised § 226.3(b), the Board also proposes to make corresponding amendments to comments 2(a)(19)–3 and 23(a)(1)–5.

³ For organizational purposes, the guidance in current comment 3(b)–1 would be moved to other comments, as discussed below.

⁴ The Dodd-Frank Act specifically requires that the threshold amount be adjusted annually by any annual percentage increase in the CPI-W, as published by the Bureau of Labor Statistics; however, it does not specify which Bureau of Labor Statistics report should be used to determine that increase. Consistent with its approach for annual adjustments in § 226.32(a)(1)(ii), the Board proposes to use the CPI-W reported by the Bureau of Labor Statistics for June 1 of each year. See 12 CFR 226.32(a)(1)(ii) and its commentary. The Board believes this approach would permit the publication of an increased threshold amount sufficiently in advance of the January 1 effective date.

solicits comment on whether additional specificity is needed regarding the amount of time necessary to begin to comply with Regulation Z.

Revised comment 3(b)–2.iii would address the effect of subsequent changes when an open-end account is exempt under § 226.3(b) based on an initial extension of credit. The comment would clarify that, if a creditor makes an initial extension of credit at account opening that exceeds the threshold amount in effect at that time, the account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. Comment 3(b)–2.iii would also clarify that, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account will not become exempt under § 226.3(b) even if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

Revised comment 3(b)–2.iv would address the effect of subsequent changes when an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, rather than an initial extension of credit. In particular, the comment would clarify that if the firm commitment does not exceed the threshold amount, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest). In addition, the comment would clarify that, in order for an open-end account to remain exempt under § 226.3(b) based on a firm commitment, the amount of the firm commitment must continue to exceed the threshold amount currently in effect, as adjusted annually. Thus, in order for an account to remain exempt, a creditor could not reduce its firm commitment below the threshold amount currently in effect and may be required to increase its firm commitment when the threshold amount is increased as a result of an increase in the CPI–W. Illustrative examples are provided in the commentary.

The Board believes that if creditors were not required to exceed the

applicable threshold amount on an ongoing basis for open-end accounts, it could produce anomalous results and, in some cases, raise concerns about circumvention of Regulation Z. For example, if an open-end account remained exempt permanently based on a firm commitment at account opening to extend credit in excess of the threshold amount, an account opened in December might qualify for an exemption based on a firm commitment while an identical account with the same firm commitment opened in January would not because the applicable threshold amount had increased. Furthermore, the proposed rule would prevent accounts from being established with firm commitments that qualify for the exemption at account opening but then have the commitment reduced below the threshold. Under the proposed rule, the account would lose its exempt status in these circumstances. The Board believes that, because Section 1100E was intended to broaden the scope of TILA, it is consistent with Congress's intent to construe the exemption in § 226.3(b) narrowly.

However, proposed comment 3(b)–2.iv would provide creditors with flexibility when an open-end account no longer qualifies for an exemption under § 226.3(b) based on a firm commitment. Specifically, the comment would clarify that the creditor may either begin to comply with Regulation Z or, if permitted by the account agreement and applicable state law, permit the consumer to repay any outstanding balance on the account consistent with the account terms without providing additional extensions of credit. The Board believes that additional flexibility is necessary in these circumstances, so that creditors that do not have the systems in place to comply with Regulation Z do not close the account and require the consumer to immediately repay the outstanding balance. However, the Board solicits comment on whether the proposed guidance poses any operational difficulties and whether additional flexibility is warranted in these circumstances.

Finally, revised comment 3(b)–2.iv addresses circumstances in which an account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment and the creditor subsequently makes an initial extension of credit that exceeds the applicable threshold amount. The comment would clarify that, in these circumstances, the account may qualify for a § 226.3(b) exemption based on the initial extension of credit if that extension is a

single advance exceeding the threshold amount at the time of the extension. As a result, the account would remain exempt under § 226.3(b) even if the credit limit is subsequently reduced below the threshold amount or if the threshold amount is subsequently increased to reflect an increase in the CPI–W.

For example, assume that, at account opening on January 1 of year one, the threshold amount under § 226.3(b) is \$50,000 and an open-end account qualifies for an exemption because the creditor has made a firm commitment to extend \$52,000 in credit. On July 1 of year one, the consumer uses the account for a single advance of \$52,000, which is the initial extension of credit on the account. As a result of this extension of credit, the account will remain exempt under § 226.3(b) even if, after July 1 of year one, the creditor reduces the firm commitment to less than \$50,000 or if, on January 1 of year two, the threshold amount increases to \$52,500 to reflect an increase in the CPI–W.

As discussed above, the Board believes that, as a general matter, whether an account is exempt under § 226.3(b) should be determined at account opening. However, when an account qualifies for an exemption at account opening based on a firm commitment, the Board believes that it may be appropriate to permit the account to retain that exemption based on an initial extension of credit that occurs after account opening. However, the Board solicits comment on this approach.

Closed-End Credit

Revised comment 3(b)–3 would provide guidance on the application of § 226.3(b)(1) to closed-end loans. Specifically, comment 3(b)–3.i would clarify that a closed-end loan is exempt under § 226.3(b) in either of two circumstances (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)).

First, the comment clarifies that a closed-end loan would be exempt if the creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the account balance is subsequently reduced below the threshold amount, such as through repayment.

Second, the comment clarifies that a closed-end loan would be exempt if the

creditor makes a loan commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. The comment would further clarify that, in these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit actually extended does not exceed the threshold amount.⁵ This guidance addresses loan commitments (such as certain construction loans) with terms that provide for scheduled advances or advances at the consumer's option, where the total amount of credit ultimately drawn may be less than the original loan commitment on which the exemption was based. The Board, however, solicits comment on whether this guidance sufficiently addresses other types of closed-end loan products.

Revised comment 3(b)–3.ii would also provide guidance on the effect of subsequent changes to a closed-end loan or loan commitment or to the threshold amount. Specifically, the comment would clarify that, if a creditor makes an extension of credit or loan commitment to extend credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI–W. In addition, the revised comment incorporates existing guidance regarding the refinancing of an exempt closed-end loan.

Additional Commentary

New comment 3(b)–4 would provide guidance where a security interest in any real property, or in personal property used or expected to be used as a consumer's principal dwelling, is added to an existing account or loan that is exempt under § 226.3(b). The proposed comment would incorporate guidance from current comments 3(b)–2.ii and 3(b)–3 with respect to open-end credit and closed-end credit, respectively.

Finally, new comment 3(b)–5 would incorporate the guidance currently provided in comment 3(b)–1 regarding credit extensions secured by mobile homes. Specifically, this comment would clarify that the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer.

3(b)(2) Special Exemption; Open-End Accounts Exempt Prior to July 21, 2011

The Board proposes to add a new § 226.3(b)(2) in order to address transition issues related to open-end accounts that are exempt under current § 226.3(b) but may not be exempt under revised § 226.3(b)(1). Specifically, new § 226.3(b)(2) would provide that an open-end account that is exempt under § 226.3(b) on July 20, 2011 based on an extension of credit in excess of \$25,000 or an express written commitment to extend credit in excess of \$25,000 remains exempt until July 21, 2012. However, the account would cease to be exempt under § 226.3(b)(2) if the creditor takes a security interest in any real property, or in personal property used or expected to be used as the consumer's principal dwelling; or if the creditor reduces any express written commitment to extend credit to \$25,000 or less. New § 226.3(b)(2) is proposed pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of, and to facilitate compliance with, TILA. 15 U.S.C. 1604(a).

The Board understands that many creditors currently choose to comply with Regulation Z in circumstances where the initial extension or firm commitment exceeds \$25,000. For example, the Board understands that creditors offering closed-end automobile loans typically provide Regulation Z disclosures regardless of the amount of the loan. However, because some currently exempt open-end credit accounts may be serviced on platforms that cannot presently provide Regulation Z disclosures, the Board believes that a transition period providing additional flexibility may be needed in order to facilitate compliance with the revisions to § 226.3(b).

In particular, the Board understands that this concern arises with respect to certain open-end lines of credit associated with brokerage accounts that are serviced on platforms that cannot currently provide Regulation Z disclosures.⁶ In some cases, the creditor may provide in the account terms that the initial extension of credit must exceed \$25,000. However, credit is not necessarily extended at account opening, and may be extended only upon request by the consumer at a later date, which may be months or years after account opening. Thus, if an extension in excess of \$25,000 has not occurred prior to July 21, 2011, the

account would cease to qualify for an exemption under § 226.3(b), consistent with proposed comment 3(b)–2.

In these circumstances, it appears that additional time may be required to enable creditors to either develop the systems necessary to comply with Regulation Z or to take steps necessary to retain exempt status for the account (such as by making a firm commitment in excess of the threshold amount). If additional time were not provided, the Board believes some creditors might choose to close unused accounts shortly before July 21, 2011, which could harm consumers who rely on their ability to access those accounts. Accordingly, in this narrow set of circumstances, the Board proposes to provide creditors with an additional 12 months (in other words, until July 21, 2012) to make the necessary adjustments. However, the Board solicits comment on whether any transition period is necessary and, if so, whether a different time period (shorter or longer) would be more appropriate.

In other cases, a creditor may provide a firm commitment to extend credit in an amount equal to the value of the securities in the associated brokerage account. Thus, a line of credit secured by collateral valued at \$30,000 would cease to be exempt on July 21, 2011. While creditors relying on an exemption under § 226.3(b) based on a firm commitment will have to account for regular increases in the exemption threshold as a result of increases in the CPI–W, the Board believes that, for the reasons discussed above, it may be appropriate to provide creditors with additional time to adjust to the increase in the threshold amount from \$25,000 to \$50,000. As above, the Board solicits comment on whether any transition period is necessary and, if so, whether a different time period (shorter or longer) would be more appropriate.

New comment 3(b)–6 would provide guidance and illustrative examples regarding the application of § 226.3(b)(2). In particular, it would clarify that § 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011 and does not apply if a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling.

IV. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an initial and final regulatory flexibility analysis on the impact a rule is expected to have on small entities. However, under section 605(b) of the RFA, the regulatory flexibility analysis otherwise required

⁵ This guidance is currently set forth in comment 3(b)–1.

⁶ Because the creditors who provide these accounts are not broker-dealers, the accounts are not exempt under § 226.3(d).

under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. The Board has prepared the following initial regulatory flexibility analysis pursuant to section 603 of the RFA.

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the proposed rule.* The proposed rule would implement Section 1100E of the Dodd-Frank Act, which increases the threshold for consumer credit transactions exempt under TILA from \$25,000 to \$50,000. Section 1100E also provides that this amount shall be increased annually to reflect any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The supplementary information above describes in detail the reasons, objectives, and legal basis for each component of the proposed rule.

2. *Small entities affected by the proposed rule.* All creditors that offer closed-end or open-end consumer credit extensions that exceed \$25,000 but do not exceed \$50,000, as adjusted annually to reflect increases in the CPI-W, would be affected by the proposed rule. Based on June 2010 call report data, the Board estimates that there are approximately 4,360 banks with assets of \$175 million or less and 6,655 credit unions with assets of \$175 million or less, that would be required to comply with the Board's proposed rule. The Board acknowledges, however, that the total number of small entities likely to be affected by the proposed rule is unknown, in part because Regulation Z has broad applicability to individuals and businesses that extend even small amounts of consumer credit. In addition, it is unclear how many of these small entities currently do not have systems in place to comply with Regulation Z because they only extend credit in excess of \$25,000. It is also unclear how many of those entities will choose to engage in consumer credit transactions between \$25,000 and \$50,000, as opposed to only making loans above the new threshold. The Board invites comment on the effect of the proposed rule on small entities.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would impose new recordkeeping, reporting, and compliance requirements under Regulation Z on creditors that

extend consumer credit in amounts that exceed \$25,000 but do not exceed \$50,000, as adjusted annually to reflect increases in the CPI-W. The Board understands that small entities that offer consumer credit generally have systems in place to comply with Regulation Z for extensions of credit of \$25,000 or less. The Board notes that the precise costs to small entities to provide Regulation Z disclosures to accounts with consumer credit extensions of more than \$25,000 but not more than \$50,000, and the costs of updating their systems to comply with the proposed rule, are difficult to predict. These costs would depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer accounts, the complexity of the terms of the products that they offer, and the range of such product offerings. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small entities.

Proposed Amendments

This subsection summarizes several of the proposed amendments to Regulation Z and their likely impact on small entities. More information regarding these and other proposed changes can be found in III. Section-by-Section Analysis.

On July 21, 2011, the amendments to proposed § 226.3(b)(1)(i) and its accompanying commentary would raise the threshold for exempt consumer credit transactions from \$25,000 to \$50,000. For accounts which do not qualify for the exemption under the new threshold, creditors that are small entities would be required to comply with all applicable Regulation Z requirements. The Board anticipates that creditors that are small entities, with some additional burden, would service accounts which do not meet the increased threshold for exemption on the same systems in place for non-exempt accounts. Furthermore, the Board understands that some creditors that are small entities generally do not rely on the exemption in § 226.3(b) and provide Regulation Z disclosures regardless of the amount of the credit extension. Therefore, the Board does not anticipate significant additional burden on small entities by raising the exemption threshold dollar amount.

Under proposed § 226.3(b)(1)(ii), the threshold amount must be adjusted annually by any annual percentage increase in the CPI-W. To the extent creditors that are small entities rely on

the exemption under § 226.3(b), proposed § 226.3(b)(1)(ii) would require those creditors to establish processes and alter their systems in order to comply with the provision. The cost of such changes would depend on the size of the institution and the composition of its portfolio. The Board anticipates that creditors that are small entities, with some additional burden, would service accounts which do not or may not meet the applicable threshold for exemption on the same systems in place for non-exempt accounts. In addition, as noted above, the Board understands that many creditors that are small entities generally provide Regulation Z disclosures regardless of the amount of the credit extension. As a result, the Board does not anticipate significant additional burden on small entities by adjusting the exemption threshold dollar amount annually for inflation.

Proposed § 226.3(b)(2) would address circumstances where certain previously exempt open-end accounts would cease to qualify for an exemption on July 21, 2011 under the revised threshold amount. Under proposed § 226.3(b)(2), these accounts would have until July 21, 2012 (one year after the effective date) to comply with the revised threshold amount in effect at that time. The Board would reduce the burden on small entities by providing transition guidance for these accounts in order to ease compliance with the proposed rule.

Accordingly, the Board believes that, in the aggregate, the provisions of its proposed rule would not have a significant economic impact on a substantial number of small entities.

4. *Other Federal rules.* The Board has not identified any Federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation Z.

5. *Significant alternatives to the proposed revisions.* The provisions of the proposed rule would implement the statutory requirements of the Dodd-Frank Act, which establish new threshold requirements for exempt consumer credit transactions. As discussed in the supplementary information, the Board has sought to provide small entities with additional time to come into compliance where necessary, while effectuating the statute in a manner that is beneficial to consumers. In addition, the proposed rule would clarify that, if an initial extension of credit in excess of the existing threshold (\$25,000) is made prior to July 21, 2011, the account remains exempt, notwithstanding subsequent increases in the threshold amount. The Board welcomes comment on any significant alternatives, consistent with Section 1100E of the

Dodd-Frank Act, which would minimize the impact of the proposed rule on small entities.

V. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). In addition, as permitted by the PRA, the Board proposes to extend for three years the current recordkeeping and disclosure requirements in connection with Regulation Z. The collection of information that is required by this proposed rule is found in 12 CFR Part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100-0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions, small businesses, and institutions of higher education. TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and for home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Board that engage in lending

covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Board-regulated institutions as: state member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other Federal agencies account for the paperwork burden on other entities subject to Regulation Z. To ease the burden and cost of compliance with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

The current total annual burden to comply with the provisions of Regulation Z is estimated to be 1,497,362 hours for the 1,138 institutions⁷ supervised by the Board that are deemed to be respondents for the purposes of the PRA.

On July 21, 2011, the amendments to proposed § 226.3(b)(1)(i) and its accompanying commentary would raise the threshold for exempt consumer credit transactions from \$25,000 to \$50,000. In addition, proposed § 226.3(b)(1)(ii) would require that the threshold dollar amount be adjusted annually for inflation to reflect any annual percentage increase in the CPI-W. Creditors would be required to begin complying with Regulation Z requirements for certain accounts with extensions of consumer credit of more than \$25,000 but not more than \$50,000, as adjusted annually to reflect increases in the CPI-W.

The Board estimates that the proposed rule would impose a one-time increase in the total annual burden under Regulation Z. The 1,138 respondents would take, on average, 40 hours (one business week) to update their systems to begin to comply with the requirements of Regulation Z for loans that are no longer exempt. This one-time revision would increase the burden by 45,520 hours. On a continuing basis, the Board estimates that 1,138 respondents would take, on average, 8 hours (one business day) annually to comply with the requirements of Regulation Z for loans that are no longer exempt and would increase the ongoing burden by 9,104 hours. Thus, the total annual burden is estimated to increase by

54,624 hours (from 1,497,362 to 1,551,986 hours) during the first year after a final rule is adopted. Thereafter, the ongoing total annual burden would be 1,506,466.⁸

The total burden increase represents averages for all respondents regulated by the Board. The Board expects that the amount of time required to implement each of the proposed changes for a given financial institution or entity may vary based on the size and complexity of the respondent.

The other Federal financial institution supervisory agencies (the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA)) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and Federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15 U.S.C. 1607(a). These agencies may, but are not required to, use the Board's methodology for estimating burden. Using the Board's method, the total current estimated annual burden for the approximately 16,200 domestically chartered commercial banks, thrifts, and Federal credit unions and U.S. branches and agencies of foreign banks supervised by the Board, OCC, OTS, FDIC, and NCUA under TILA would be approximately 21,813,445 hours. The proposed rule would impose a one-time increase in the estimated annual burden by 648,000. On a continuing basis, the proposed rule would impose an increase in the estimated annual burden by 129,600. Thus, the total annual burden is estimated to increase by 777,600 hours to 22,591,045 hours during the first year after a final rule is adopted. Thereafter, the ongoing total annual burden would be 21,943,045. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance

⁸ The burden estimate for this rulemaking does not include the burden addressing changes to implement the following provisions announced in separate rulemakings:

Closed-End Mortgages (Docket No. R-1366) (74 FR 43232) (75 FR 58470), Home-Equity Lines of Credit (Docket No. R-1367) (74 FR 43428),

Reverse Mortgages (Docket No. R-1390) (75 FR 58539), or

Appraisal Independence (Docket No. R-1394) (75 FR 66554).

⁷ The number of Federal Reserve-supervised creditors was obtained from numbers published in the Board of Governors of the Federal Reserve System Annual Report: 878 State member banks, 258 Branches & agencies of foreign banks, and 2 Commercial lending companies.

of the Board's functions, including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95-A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

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

Text of Proposed Revisions

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

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 is revised 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 ◀.

Subpart B—Open-End Credit

2. Section 226.3(b) is revised to read as follows:

§ 226.3 Exempt transactions.

* * * * *

(b) *Credit over ► applicable threshold amount* ◀ [*\$25,000 not secured by real property or a dwelling*]. ►(1) *General exemption.* (i) *Requirements.* ◀ An extension of credit in which the amount ► of credit extended ◀ [financed] exceeds ► the applicable threshold amount ◀ [*\$25,000*] or in which there is an express written commitment to extend credit in excess of ► the applicable threshold amount ◀ [*\$25,000*], unless the extension of credit is:

►(A) ◀ [(1)] Secured by ► any ◀ real property, or by personal property used

or expected to be used as the principal dwelling of the consumer; or

►(B) ◀ [(2)] A private education loan as defined in § 226.46(b)(5).

►(ii) *Annual adjustments.* For purposes of this paragraph, the threshold amount is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official staff commentary to this paragraph for the threshold amount applicable to a specific extension of credit or express written commitment to extend credit.

(2) *Special exemption; open-end accounts exempt prior to July 21, 2011.* An open-end account that is exempt under paragraph (b) of this section on July 20, 2011 based on an extension of credit in excess of \$25,000 or an express written commitment to extend credit in excess of \$25,000 remains exempt until July 21, 2012. However, an account ceases to be exempt under this paragraph if:

(i) The creditor takes a security interest in any real property, or in personal property used or expected to be used as the consumer's principal dwelling; or

(ii) The creditor reduces any express written commitment to extend credit to \$25,000 or less. ◀

* * * * *

3. In Supplement I to Part 226:

A. Under *Section 226.2—Definitions and Rules of Construction*, under *2(a)(19) Dwelling*, paragraph 3. is revised.

B. Under *Section 226.3—Exempt Transactions*, the heading *3(b) Credit over \$25,000 not secured by real property or a dwelling* and paragraphs 1. through 3. are revised and paragraphs 4. through 6. are added.

C. Under *Section 226.23—Right of Rescission*, under *23(a) Consumer's Right to Rescind*, under *Paragraph 23(a)(1)*, paragraph 5. is revised.

The additions and revisions read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

* * * * *

2(a)(19) Dwelling.

* * * * *

3. *Relation to exemptions.* Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation

despite the general exemption in § 226.3(b) [for credit extensions over \$25,000].

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over ► applicable threshold amount ◀ [*\$25,000 not secured by real property or a dwelling*].

►1. *Threshold amount.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. This comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900.

i. Prior to July 21, 2011, the threshold amount is \$25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is \$50,000.

2. Open-end credit.

i. *Qualifying for exemption.* An open-end account is exempt under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at account opening that exceeds the threshold amount in effect at the time the account is opened; or

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this Part within a reasonable period of time after the account ceases to be exempt (except as otherwise provided). For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. See also comment 3(b)-4.

iii. *Subsequent changes when exemption based on initial extension of credit.* If a

creditor makes an initial extension of credit at account opening that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI-W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption based on firm commitment.*

A. *General.* If an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. However, if the firm commitment does not exceed the threshold amount, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest). In addition, in order for an open-end account to remain exempt under § 226.3(b) based on a firm commitment, the amount of the firm commitment must continue to exceed the threshold amount currently in effect, as adjusted annually. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is \$50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend \$55,000 in credit. If during year one the creditor reduces its firm commitment to \$40,000, the account is no longer exempt under § 226.3(b).

(2) Assume that, at account opening in year one, the threshold amount in effect is \$50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend \$55,000 in credit. If the threshold amount increases to \$50,900 on January 1 of year two as a result of an increase in the CPI-W, the account remains exempt under § 226.3(b). However, if the threshold amount increases to \$55,000 on January 1 of year six, the creditor would have to increase its firm commitment to an amount above \$55,000 in order for the account to remain exempt.

B. *Accounts no longer qualifying for exemption.* If an open-end account that was exempt under § 226.3(b) based on a firm commitment no longer qualifies for that exemption, the creditor may begin to comply with all of the applicable requirements of this Part within a reasonable period of time after the account ceases to be exempt. However, in the alternative, the creditor may, at its option, permit the consumer to repay any outstanding balance on the account consistent with the account terms without

providing additional extensions of credit, if permitted by the terms of the account and applicable state law.

C. *Subsequent initial extension of credit.* If an open-end account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 226.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. Although the initial extension of credit need not be made at account opening in these circumstances, the account must qualify for an exemption based on the firm commitment at account opening and continue to qualify for an exemption on that basis until the initial extension of credit is made. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is \$50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend \$55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount increases to \$51,000 as a result of an increase in the CPI-W. On July 1 of year two, the consumer uses the account for an initial extension of \$52,000. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to \$51,000 or less, or if, during year three, the threshold amount increases to \$53,000 to reflect an increase in the CPI-W.

(2) Same facts as in paragraph (1) above except that the consumer uses the account for an initial extension of \$30,000 on July 1 of year two and for an extension of \$22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 226.3(b) based on the \$30,000 initial extension of credit because that extension did not exceed the applicable threshold amount (\$52,000), although the account remains exempt based on the firm commitment to extend \$55,000 in credit.

(3) Same facts as in paragraph (1) above except that, on April 1 of year two, the creditor reduces the firm commitment to \$50,000, which is below the \$51,000 threshold then in effect. Because the account ceases to qualify for a § 226.3(b) exemption on April 1 of year two, the account does not qualify for a § 226.3(b) exemption based on a \$52,000 initial extension of credit on July 1 of year two.

3. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 226.3(b) (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)), if either of the following conditions is met:

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount.

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI-W. Furthermore, in these circumstances, the loan remains exempt even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan). However, a closed-end loan is not exempt under § 226.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this Part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 226.3(b). See also comment 3(b)-4.

4. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if, after account opening, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 226.3(b) and the creditor must begin to comply with all of the applicable requirements of this Part within a reasonable period of time. See comment 3(b)-2.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must give the consumer the right to rescind the security interest consistent with § 226.15.

ii. *Closed-end credit.* For closed-end loans, if, after consummation, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 226.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 226.23 and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 226.23(a)(1) and the accompanying commentary. In contrast, if a closed-end loan that is exempt under § 226.3(b) is satisfied and replaced by a loan that is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 226.3(b) and the creditor must begin to comply with all the applicable requirements of this Part. See comment 3(b)-3.

5. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 226.2(a)(19), the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–4.

6. *Special exemption for open-end accounts exempt prior to July 21, 2011.* Section 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 226.3(b)(2) does not apply if a security interest is taken by the creditor in any real property, or in personal property used or expected to be used as the consumer's principal dwelling.

i. *Initial extension of credit.*

A. If, prior to July 21, 2011, a creditor makes an initial extension of credit of more than \$25,000 on an open-end account, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount.

B. If the terms of an open-end account require that the initial extension of credit on that account be more than \$25,000 but that extension has not occurred prior to July 21, 2011, the account remains exempt under § 226.3(b)(2) until July 21, 2012. However, if an initial extension of credit of more than \$25,000 is actually made prior to July 21, 2012, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount. If an initial extension of credit of more than \$25,000 is not made prior to July 21, 2012, the account is no longer exempt under § 226.3(b). However, if, prior to that date, the creditor makes a firm commitment to extend credit in excess of the threshold amount in effect at that time, the account remains exempt under § 226.3(b)(1).

ii. *Firm commitment.* If, prior to July 21, 2011, a creditor makes a firm commitment to extend credit in excess of \$25,000 on an open-end account, the account remains exempt under § 226.3(b)(2) until July 21, 2012 (unless the firm commitment is reduced to \$25,000 or less). If an initial extension of credit of more than \$25,000 is made prior to July 21, 2012, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount. However, if no such extension of credit is made, the firm commitment must be increased prior to July 21, 2012 to the threshold amount in effect at that time in order for the account to remain exempt under § 226.3(b)(1). ◀

[1. *Coverage.* Since a mobile home can be a dwelling under § 226.2(a)(19), this exemption does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer, even if the credit exceeds \$25,000. A loan commitment for closed-end credit in excess of \$25,000 is exempt even though the amounts actually drawn never actually reach \$25,000.

2. *Open-end credit.* i. An open-end credit plan is exempt under § 226.3(b) (unless secured by real property or personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes a firm commitment to lend over \$25,000 with no requirement of

additional credit information for any advances (except as permitted from time to time pursuant to § 226.2(a)(20)).

B. The initial extension of credit on the line exceeds \$25,000.

ii. If a security interest is taken at a later time in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, the plan would no longer be exempt. The creditor must comply with all of the requirements of the regulation including, for example, providing the consumer with an initial disclosure statement. If the security interest being added is in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest. (See the commentary to § 226.15 concerning the right of rescission.)

3. *Closed-end credit—subsequent changes.* A closed-end loan for over \$25,000 may later be rewritten for \$25,000 or less, or a security interest in real property or in personal property used or expected to be used as the consumer's principal dwelling may be added to an extension of credit for over \$25,000. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor. (See the commentary to § 226.23(a)(1) regarding the right of rescission when a security interest in a consumer's principal dwelling is added to a previously exempt transaction.)

* * * * *

Section 226.23—Right of Rescission

* * * * *

23(a) Consumer's Right to Rescind
Paragraph 23(a)(1).

* * * * *

5. *Addition of a security interest.* Under footnote 47, the addition of a security interest in a consumer's principal dwelling to an existing obligation is rescindable even if the existing obligation is not satisfied and replaced by a new obligation, and even if the existing obligation was previously exempt ▶ under § 226.3(b) ◀ [(because it was credit over \$25,000 not secured by real property or a consumer's principal dwelling)]. The right of rescission applies only to the added security interest, however, and not to the original obligation. In those situations, only the § 226.23(b) notice need be delivered, not new material disclosures; the rescission period will begin to run from the delivery of the notice.

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By order of the Board of Governors of the Federal Reserve System, December 10, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010-31529 Filed 12-15-10; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2010-1054; Airspace
Docket No. 10-AGL-23]

Proposed Amendment of Class E Airspace; Kenton, OH

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking
(NPRM).

SUMMARY: This action proposes to amend Class E airspace at Kenton, OH. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Hardin County Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before January 31, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2010-1054/Airspace Docket No. 10-AGL-23, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321-7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall