



RESCINDED # 22

Office of Thrift Supervision

Department of the Treasury

Montrice Godard Yakimov

Managing Director, Compliance and Consumer Protection

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6173

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CEO 343. Click to link to CEO
343.

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

FROM:

Montrice Godard Yakimov, Managing Director
Compliance and Consumer Protection

SUBJECT:

Revised TILA Open-End Credit Examination Procedures

The Truth in Lending Act (TILA) requires creditors to provide information about the cost of credit that consumers can use to make informed choices. As a result of recent amendments to the TILA and accompanying revisions to Regulation Z, OTS has updated its examination procedures to address changes in open-end credit disclosure requirements. Specifically, the Board of Governors of the Federal Reserve System ("Board") has issued an interim final rule to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) that became effective on August 20, 2009.¹ The rule amends Regulation Z to address change-in-terms notice requirements and the amount of time that consumers have to make their payments. The Board has announced that it will implement other provisions of the Credit CARD Act in stages.²

This set of revisions to the TILA examination procedures incorporates the changes to Regulation Z that are covered in the interim final rule. The revised examination procedures require examiners to evaluate whether savings associations:

- Have reasonable procedures to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires;
- Provide written notice of significant changes in account terms (such as an APR increase, fees for available credit, grace period, or overlimit fees), an increase in the required minimum periodic payment, or a rate increase due to delinquency or default or as a penalty, 45 days before the effective date of the change or increase; and
- Include in the notice a description of the changes and their effective date. Except for an increase in the required minimum periodic payment, also include in the notice a statement that the consumer has the right to reject the changes prior to the effective date (unless the consumer fails to make the minimum payment for 60 days after the due date); instructions for rejecting the changes; and a statement, if applicable, that if the consumer rejects the changes, the consumer's ability to use the account will be suspended.

Notably, the requirement that creditors adopt procedures to ensure that periodic statements are mailed or delivered at least 21 days prior to the due date applies to all open-end consumer credit plans. This includes plans that are home-secured,³ such as home equity lines of credit (HELOCs). In addition, savings associations remain responsible for complying with the OTS Late Charge rule,⁴ which prohibits charging a late fee on a home loan (including a HELOC) if the payment is received within 15 days after the due date.

¹ See Truth in Lending Interim Final Rule, 74 FR 36077 (July 22, 2009).

² *Id.* at 36078.

³ *Id.* at 36080.

⁴ 12 C.F.R. § 560.33.

Separately, for accounts that are not home-secured, the Credit CARD Act and amendments to Regulation Z require credit card issuers to provide 45 days' notice of changes in significant terms, increases in the required minimum payment, and rate increases due to delinquency or default or as a penalty.⁵ Such notices must include information specified in the rule.⁶ Regulation Z has also been amended to provide consumers with a right to reject such changes (except for an increase in the required minimum periodic payment or where the consumer fails to make the minimum payment for 60 days after the due date).⁷ If a consumer exercises that right, special protections apply, including prohibiting an issuer from applying the change or increase to the consumer's existing account balance.⁸ The creditor may, however, apply the change or increase to transactions that occur more than 14 days after it sends its notice.⁹ This approach is intended to ensure that an affected consumer has received the change in terms notice and has had a reasonable amount of time to decide whether to use the account for additional transactions.¹⁰

Particularly for future transactions, consumers may be confused about the effect of exercising the right to reject changes or increases. Accordingly, OTS recommends that when savings associations apply changes or increases to future transactions, notices should include an additional statement. This statement should explain that whether a consumer accepts or rejects a change or increase, it will apply to transactions that occur more than 14 days after the notice has been provided.¹¹ The notice should specify this date. For example, the statement might read:

NOTE: Even if you reject this change in terms, the new terms will be applied to any transactions on your account that occur on or after [INSERT DATE].

This statement should be included with the other information specifically required to be provided in the notice.¹²

The revised examination procedures were developed on an interagency basis. They reflect a risk-focused approach to comprehensive examinations. The revised Examination Handbook Section 1305 is available through the link provided below.

For more information, please contact Suzanne McQueen, Consumer Regulations Analyst, at 202/906-6459 or Suzanne.McQueen@ots.treas.gov.

[Link to Handbook Section 1305](#)

⁵ Truth in Lending Interim Final Rule, 74 FR at 36094-36095 (amending 12 C.F.R. § 226.9(c)(2) and adding 12 C.F.R. § 226.9(g)).

⁶ *Id.* (amending 12 C.F.R. § 226.9(c)(2)(iv) and adding 12 C.F.R. § 226.9(g)(3)).

⁷ *Id.* at 36096 (adding 12 C.F.R. § 226.9(h)(1) and (h)(3)).

⁸ *Id.* at 36096 (adding 12 C.F.R. § 226.9(h)(2)(i)).

⁹ *Id.* (adding 12 C.F.R. § 226.9(h)(3)(ii)).

¹⁰ *Id.* at 36090.

¹¹ If the savings association provides a period longer than 14 days, the additional statement should be adjusted accordingly.

¹² 74 FR at 36094-36095 (amending 12 C.F.R. § 226.9(c)(2)(iv) and adding 12 C.F.R. § 226.9(g)(3)).