

commentary interprets the requirements of Regulation Z (12 CFR part 226 (Supp. I)).

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a)(27) Clear and Conspicuous

Section 122(a) of TILA requires disclosures to be made clearly and conspicuously. *See* 15 U.S.C. 1632. This standard is implemented in Regulation Z. *See* § 226.5(a)(1); § 226.17(a)(1); § 226.31(b). Guidance on how creditors may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comment 5(a)(1)–1; 17(a)(1)–1. The commentary states that under this standard, disclosures must be in a reasonably understandable form. For purposes of the disclosures provided with credit card solicitations and applications, the commentary also notes that disclosures must be readily noticeable to the consumer. *See* comment 5a(a)(2)–1.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be “clear and conspicuous” under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and “clear and readily understandable” under Regulation E (Electronic Fund Transfers). In interpreting the “clear and conspicuous” standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be “in a reasonably understandable” form; similarly, under Regulation DD disclosures must be in a format that allows consumers “to readily understand the terms of their account.” In contrast, the Board’s Regulation P (Privacy of Consumer Financial Information) defines the “clear and conspicuous” standard to mean that a disclosure is “reasonably understandable and designed to call attention to the nature and significance of the information” in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides a series of examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that

consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation Z by adding a definition for clear and conspicuous in § 226.2(a)(27), consistent with the “clear and conspicuous” definition in Regulation P. The staff commentary to Regulation Z also would be revised to add comments 2(a)(27)–1 and –2, consistent with Regulation P’s examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, M, and DD appear elsewhere in today’s **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Proposed comments 2(a)(27)–3 and –4 contain guidance currently in comment 5(a)(1)–1. The “clear and conspicuous” standard does not prohibit adding other items to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(a)(27)–3 would clarify, however, that the presence of other information may be a factor in determining whether the “clear and conspicuous” standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the “clear and conspicuous” standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(a)(27)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type size requirement. Similarly, the proposal also would not affect other format rules, such as the existing requirement for making some disclosures more conspicuous than others (*See* § 226.5(a)(2); § 226.17(a)(2)), or segregating some specific information (*See* § 226.17(a)(1)).

To eliminate redundancy with proposed § 226.2(a)(27) and its accompanying commentary, the Board also proposes to revise the following commentary provisions in Regulation Z that address the “clear and conspicuous” standard: comments 5(a)(1)–1, 5a(a)(2)–1, 16–1, 24–1, and Appendix K (d)(2)–1. In this regard, in comment 5a(a)(2)–1, the guidance regarding disclosures for credit card applications and solicitations that are transmitted by electronic communication, has been deleted. Guidance regarding the “clear and conspicuous” standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

2(b) Rules of Construction

The Board proposes to add an interpretative rule of construction in § 226.2(b)(5) stating that where the word “amount” is used to describe a disclosure requirement it refers to a numerical amount throughout Regulation Z. This interpretation addresses a matter discussed in a recent court decision regarding the disclosure of payments scheduled to repay a closed-end credit transaction. *See* 15 U.S.C. 1638(a)(6); 12 CFR 226.18(g). The Board believes that the decision, by endorsing narrative descriptions of amounts rather than numerical amounts, may lead to confusion in disclosures.

The term “amount” has general applicability throughout Regulation Z and the term “amount” is used throughout TILA, for example, to describe disclosures such as the amount financed, the amounts being disbursed to the consumer and to third parties, and the total of payments, which is defined as the amount the consumer will have paid after making all scheduled payments. A broad interpretation of the term suggesting that narrative descriptions may replace numerical “amounts” contravenes TILA’s purpose to provide consumers with clear and uniform credit disclosures. Proposed comment 2(b)–2 would provide examples of how the interpretative rule of construction for “amount” applies in certain disclosures required by Regulation Z.

Subpart B—Open-end Credit

Section 226.15—Right of Rescission

15(a) Consumer’s Right To Rescind 15(a)(2)

Section 125(a) of TILA provides that, in certain credit transactions in which