

rule as long as the entry does not result in the imposition of a late charge, additional interest, or similar penalty to the consumer, or in the reporting of negative information to a consumer reporting agency.

2. *Payments to be credited.* Payments should be credited based on the legal obligation between the creditor and consumer. The legal obligation is determined by applicable state or other law.

3. *Date of receipt.* The “date of receipt” is the date that the payment instrument or other means of payment reaches the mortgage servicer. For example, payment by check is received when the mortgage servicer receives it, not when the funds are collected. If the consumer elects to have payment made by a third-party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the mortgage servicer receives the third-party payor’s check or other transfer medium, such as an electronic fund transfer.

Paragraph 36(c)(1)(ii).

1. *Pyramiding of late fees.* The prohibition on pyramiding of late fees in this subsection should be construed consistently with the “credit practices rule” of Regulation AA, 12 CFR 227.15.

Paragraph 36(c)(1)(iii).

1. *Reasonable time.* The payoff statement must be provided to the consumer, or person acting on behalf of the consumer, within a reasonable time after the request. For example, it would be reasonable under most circumstances to provide the statement within five business days of receipt of a consumer’s request. This time frame might be longer, for example, when the servicer is experiencing an unusually high volume of refinancing requests.

2. *Person acting on behalf of the consumer.* For purposes of § 226.36(c)(1)(iii), a person acting on behalf of the consumer may include the consumer’s representative, such as an attorney representing the individual, a non-profit consumer counseling or similar organization, or a creditor with which the consumer is refinancing and which requires the payoff statement to complete the refinancing. A servicer may take reasonable measures to verify the identity of any person acting on behalf of the consumer and to obtain the consumer’s authorization to release information to any such person before the “reasonable time” period begins to run.

3. *Payment requirements.* The servicer may specify reasonable requirements for making payoff requests, such as requiring requests to be in writing and directed to a mailing address, e-mail address or fax number specified by the servicer or orally to a telephone number specified by the servicer, or any other reasonable requirement or method. If the consumer does not follow these require-

ments, a longer time frame for responding to the request would be reasonable.

4. *Accuracy of payoff statements.* Payoff statements must be accurate when issued.

Paragraph 36(c)(2).

1. *Payment requirements.* The servicer may specify reasonable requirements for making payments in writing, such as requiring that payments be accompanied by the account number or payment coupon; setting a cut-off hour for payment to be received, or setting different hours for payment by mail and payments made in person; specifying that only checks or money orders should be sent by mail; specifying that payment is to be made in U.S. dollars; or specifying one particular address for receiving payments, such as a post office box. The servicer may be prohibited, however, from requiring payment solely by preauthorized electronic fund transfer. (See section 913 of the Electronic Fund Transfer Act, 15 U.S.C. 1693k.)

2. *Payment requirements—limitations.* Requirements for making payments must be reasonable; it should not be difficult for most consumers to make conforming payments. For example, it would be reasonable to require a cut-off time of 5 p.m. for receipt of a mailed check at the location specified by the servicer for receipt of such check.

3. *Implied guidelines for payments.* In the absence of specified requirements for making payments, payments may be made at any location where the servicer conducts business; any time during the servicer’s normal business hours; and by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the servicer and consumer have so agreed.

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PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES (REGULATION AA)

Subpart A—Consumer Complaints

- Sec.
- 227.1 Definitions.
- 227.2 Consumer complaint procedure.

Subpart B—Credit Practices Rule

- 227.11 Authority, purpose, and scope.
- 227.12 Definitions.
- 227.13 Unfair credit contract provisions.
- 227.14 Unfair or deceptive practices involving cosigners.
- 227.15 Unfair late charges.
- 227.16 State exemptions.

§ 227.1

12 CFR Ch. II (1–1–09 Edition)

Subpart A—Consumer Complaints

AUTHORITY: Sec. 18(f), Federal Trade Commission Act, as amended by Pub. L. 93–637.

§ 227.1 Definitions.

For the purposes of this part,¹ unless the context indicates otherwise, the following definitions apply:

(a) *Board* means the Board of Governors of the Federal Reserve System.

(b) *Consumer complaint* means an allegation by or on behalf of an individual, group of individuals, or other entity that a particular act or practice of a State member bank is unfair or deceptive, or in violation of a regulation issued by the Board pursuant to a Federal statute, or in violation of any other Act or regulation under which the bank must operate.

(c) *State member bank* means a bank that is chartered by a State and is a member of the Federal Reserve System.

(d) Unless the context indicates otherwise, *bank* shall be construed to mean a *State member bank*, and *complaint* to mean a *consumer complaint*.

[Reg. AA, 41 FR 44362, Oct. 8, 1976]

§ 227.2 Consumer complaint procedure.

(a) *Submission of complaints.* (1) Any consumer having a complaint regarding a State member bank is invited to submit it to the Federal Reserve System. The complaint should be submitted in writing, if possible, and should include the following information:

(i) A description of the act or practice that is thought to be unfair or deceptive, or in violation of existing law or regulation, including all relevant facts;

(ii) The name and address of the bank that is the subject of the complaint; and

(iii) The name and address of the complainant.

(2) Consumer complaints should be made to—Federal Reserve Consumer Help Center, P.O. Box 1200, Min-

¹The words *this part*, as used herein, mean title 12, chapter II, part 227 of the Code of Federal Regulations, cited as 12 CFR part 227 and designated as Regulation AA.

neapolis, MN 55480, Toll-free number: (888) 851–1920, Fax number: (877) 888–2520, TDD number: (877) 766–8533.

(b) *Response to complaints.* Within 15 business days of receipt of a written complaint by the Board or a Federal Reserve Bank, a substantive response or an acknowledgment setting a reasonable time for a substantive response will be sent to the individual making the complaint.

(c) *Referrals to other agencies.* Complaints received by the Board or a Federal Reserve Bank regarding an act or practice of an institution other than a State member bank will be forwarded to the Federal agency having jurisdiction over that institution.

[Reg. AA, 41 FR 44362, Oct. 8, 1976, as amended at 42 FR 2950, Jan. 14, 1977; 71 FR 11297, Mar. 7, 2006; 72 FR 55021, Sept. 28, 2007]

Subpart B—Credit Practices Rule

AUTHORITY: 15 U.S.C. 57a.

SOURCE: Reg. AA, 50 FR 16697, Apr. 29, 1985, unless otherwise noted.

§ 227.11 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board under section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f) (section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93–637).

(b) *Purpose.* Unfair or deceptive acts or practices in or affecting commerce are unlawful under section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). This subpart defines unfair or deceptive acts or practices of banks in connection with extensions of credit to consumers.

(c) *Scope.* This subpart applies to all banks and their subsidiaries, except savings banks that are members of the Federal Home Loan Bank System. Compliance is to be enforced by:

(1) The Comptroller of the Currency, in the case of national banks, banks operating under the code of laws for the District of Columbia, and federal branches and federal agencies of foreign banks;

(2) The Board of Governors of the Federal Reserve System, in the case of banks that are members of the Federal

Federal Reserve System

§ 227.13

Reserve System (other than banks referred to in paragraph (c)(1) of this section), 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; and

(3) The Federal Deposit Insurance Corporation, in the case of banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in paragraphs (c)(1) and (c)(2) of this section), and insured state branches of foreign banks.

(d) The terms used in paragraph (c) of this section that are not defined in the Federal Trade Commission Act or in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

[Reg. AA, 50 FR 16697, Apr. 29, 1985, as amended at 57 FR 20401, May 13, 1992]

§ 227.12 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Consumer* means a natural person who seeks or acquires goods, services, or money for personal, family, or household use other than for the purchase of real property.

(b)(1) *Cosigner* means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account.

(2) *Cosigner* includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a *cosigner*, whether or not the person is designated as such on the credit obligation.

(c) *Earnings* means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(d) *Household goods* means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer's dependents. The term *household goods* does not include:

(1) Works of art;

(2) Electronic entertainment equipment (other than one television and one radio);

(3) Items acquired as antiques; that is, items over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character; and

(4) Jewelry (other than wedding rings).

(e) *Obligation* means an agreement between a consumer and a creditor.

(f) *Person* means an individual, corporation, or other business organization.

§ 227.13 Unfair credit contract provisions.

It is an unfair act or practice for a bank to enter into a consumer credit obligation that contains, or to enforce in a consumer credit obligation purchased by the bank, any of the following provisions:

(a) *Confession of judgment*. A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right of notice and the opportunity to be heard in the event of suit or process thereon.

(b) *Waiver of exemption*. An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) *Assignment of wages*. An assignment of wages or other earnings unless:

§ 227.14

(1) The assignment by its terms is revocable at the will of the debtor;

(2) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or

(3) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) *Security interest in household goods.* A nonpossessory security interest in household goods other than a purchase money security interest.

§ 227.14 Unfair or deceptive practices involving cosigners.

(a) *Prohibited practices.* In connection with the extension of credit to consumers, it is:

(1) A deceptive act or practice for a bank to misrepresent the nature or extent of cosigner liability to any person; and

(2) An unfair act or practice for a bank to obligate a cosigner unless the cosigner is informed prior to becoming obligated of the nature of the cosigner's liability.

(b) *Disclosure requirement.* (1) A clear and conspicuous disclosure statement shall be given in writing to the cosigner prior to becoming obligated. The disclosure statement shall be substantially similar to the following statement and shall either be a separate document or included in the documents evidencing the consumer credit obligation.

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The bank can collect this debt from you without first trying to collect from the borrower. The bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

12 CFR Ch. II (1-1-09 Edition)

(2) In the case of open-end credit, the disclosure statement shall be given to the cosigner prior to the time that the cosigner becomes obligated for fees or transactions on the account.

(3) A bank that is in compliance with this paragraph may not be held in violation of paragraph (a)(2) of this section.

§ 227.15 Unfair late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a bank to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(b) For the purposes of this section, *collecting a debt* means any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of money due (or alleged to be due) from a consumer.

§ 227.16 State exemptions.

(a) *General rule.* (1) An appropriate state agency may apply to the Board for a determination that:

(i) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this subpart applies; and

(ii) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this subpart.

(2) If the Board makes such a determination, the provision of this subpart will not be in effect in that state to the extent specified by the Board in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively.

(b) *Applications.* The procedures under which a state agency may apply for an exemption under this section are the same as those set forth in appendix B to Regulation Z (12 CFR part 226).