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 Parts 202, 205, 213, 226, and 230

[Regulations B, E, M, Z, DD]; [Dockets No.R–1168, R–1169, R–1170, R–1167, R–1171]

Equal Credit Opportunity, Electronic Fund Transfers, Consumer Leasing, Truth in Lending, Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Withdrawal of Proposed Rules.

SUMMARY: The Board is withdrawing proposed revisions to Regulation B (Equal Credit Opportunity), Regulation E (Electronic Fund Transfers), Regulation M (Consumer Leasing), Regulation Z (Truth in Lending), and Regulation DD (Truth in Savings). The proposed revisions sought to define more specifically the standard for providing ''clear and conspicuous'' disclosures, and to provide a more uniform standard among the Board's regulations. The revisions were 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 response to concerns raised by commenters, the Board has determined that this goal should be achieved by developing proposals that focus on improving the effectiveness of individual disclosures rather than the adoption of general definitions and standards applicable across the five regulations. This effort will be undertaken in connection with the Board's periodic review of its regulations; an advance notice of proposed rulemaking is expected to be issued later this year under Regulation Z, focused on disclosures for open–end credit accounts. Although the December 2003 proposals are withdrawn, they reflect principles that institutions may find useful in creating disclosures that are clear and conspicuous. These approaches will help inform the Board's review of individual disclosures.

DATES: The withdrawal is effective June 22, 2004.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Eurgubian, Attorney, and Krista P. DeLargy, Senior Attorney, 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

Disclosures generally must be ''clear and conspicuous'' under the consumer financial services and fair lending laws administered by the Board.[1] Currently, the laws and regulations contain standards that are similar but not identical. ''Clear and conspicuous'' is generally interpreted to require that disclosures be in a ''reasonably understandable form.'' The existing interpretations do not elaborate on ''conspicuousness'' as a separate requirement distinct from clarity or understandability. See 12 CFR § 202.4(d), comment 4(d)1; § 205.4(a)(1); §§ 213.3(a) and 213.7(b), comments 3(a)–2 and 7(b)–1; §§ 226.5(a)(1), 226.17(a)(1), and 226.31(b), and comments 5(a)(1)–1, 17(a)(1)–1, and 5a(a)(2)–1; and §§ 230.3(a) and 230.8(c), comment 3(a)–1.

In contrast, Regulation P (Privacy of Consumer Financial Information), which implements the financial privacy provisions of the Gramm–Leach–Bliley Act, articulates more precisely than the other consumer regulations the standard for providing clear and conspicuous disclosures that consumers will notice and understand. Under Regulation P, disclosures are deemed ''clear'' if they are ''reasonably understandable;'' they are considered ''conspicuous'' if they are ''designed to call attention to the nature and significance of the information.'' See 12 CFR § 216.3(b). Regulation P also provides examples and guidance illustrating these standards. Although the privacy disclosures provided by industry under this standard have not been without criticism, they have been reasonably noticeable to consumers. In addition, Truth in Lending disclosures that are subject to format and type size requirements and are segregated from other information, such as those required in connection with credit card solicitations (the ''Schumer box''), tend to be more noticeable and easy to read.''

In December 2003, the Board published proposed rules to establish a more specific standard for ''clear and conspicuous'' disclosures that would be uniform for five consumer regulations, Regulations B, E, M, Z and DD (68 FR 68786, 68788, 68791, 68793, and 68799, respectively) (collectively, the ''December 2003 proposals''). The December 2003 proposals were intended to help ensure that the information required to be given to consumers in connection with financial products and services is provided in a noticeable and understandable form. Accordingly, the proposals sought to give explicit meaning to the requirement for ''conspicuousness,'' using the clear and conspicuous standard in Regulation P as a model.

The December 2003 proposals also include compliance guidance in the form of examples of how institutions could satisfy the ''clear and conspicuous'' standard, based on guidance in Regulation P. Thus, the December 2003 proposals provide examples of how institutions can make disclosures clear or reasonably understandable–such as, by using ''clear, concise sentences, paragraphs, and sections'' and ''short explanatory sentences or bullet lists whenever possible,'' and by avoiding ''legal or highly technical business terminology whenever possible.'' The guidance also provides advice on making disclosures conspicuous. For example, in a document that combines required disclosures with other information, the guidance suggests using ''distinctive type size, style, and graphic devices to call attention to the disclosures.'' The guidance also advises that disclosures are conspicuous when they ''use a typeface and type size that are easy to read,'' and confirms that 12–point type generally meets this standard. The guidance notes that disclosures printed in type smaller than 12 points do not

[1] Regulation B, which implements the Equal Credit Opportunity Act, 12 CFR part 202, 15 U.S.C. 1691 – 1691f; Regulation E, which implements the Electronic Fund Transfers Act, 12 CFR part 205, 15 U.S.C. 1693 et seq.; Regulation M, which implements the Consumer Leasing Act, 12 CFR part 213, 15 U.S.C. 1667 – 1667e; Regulation Z, which implements the Truth in Lending Act, 12 CFR part 226, 15 U.S.C. 1601 et seq.; and Regulation DD, which implements the Truth in Savings Act, 12 CFR part 230, 12 U.S.C. 4301 et seq.

automatically violate the standard, but that disclosures printed in type smaller than 8 points would likely be too small to satisfy the standard. In 2000, the Board applied this standard and other format requirements to the Schumer box.

II. Comments on the December 2003 Proposals

Almost all industry commenters strongly oppose the Board's December 2003 proposals. Industry's opposition stems largely from its concern that the proposed rules would cast doubt on whether their existing disclosures meet the ''clear and conspicuous'' standard. In particular, industry commenters are concerned that it would be significantly more difficult to integrate federal disclosures with other account–related information. They assert that this would be a departure from the Board's long–standing practice of permitting the integration of required disclosures with other account information, except in certain clearly–articulated cases, such as the Truth in Lending disclosure table required for certain credit or charge card applications and solicitations and disclosures for closed–end loans. See § 226.5a(a)(2), § 226.17(a)(1). Industry commenters assert that the December 2003 proposed revisions would result in costly compliance reviews and forms changes by institutions, and would expose institutions to heightened litigation risk under arguably subjective standards. Consumer advocates generally support the proposals' goals, but they believe the December 2003 proposals do not set high enough standards.

Specific Industry Concerns

Effectiveness of using the Regulation P standard in other regulations. The Board's Regulation P (Privacy of Consumer Financial Information) requires institutions to provide conspicuous disclosures that ''call attention to the nature and significance of the information.'' 12 CFR § 216.3(b). Institutions acknowledge that this standard, in the context of disclosing an institution's privacy policy, is workable since the privacy disclosure can be kept separate from other information in the same document. Consequently, using a heading to set off the privacy disclosures from other information satisfies the Regulation P conspicuous disclosure requirement.

Most industry commenters assert, however, that Regulation P is not an effective model for a uniform ''clear and conspicuous'' standard under the Board's consumer regulations that expressly permit institutions to integrate certain federal disclosures with contract terms and state law disclosures. For example, integrated disclosures are permitted for costs and terms required by federal law to be disclosed at account opening for deposit accounts and for open–end credit plans such as a credit card account. See 12 CFR § 230.3(a), comment 3(a)–1; § 226.5(a)(1), comment 5(a)(1)–1. Industry commenters believe that if the Regulation P ''conspicuous'' standard were adopted for these regulations, institutions generally would have to segregate required federal disclosures from contract terms and other information, as they currently do for privacy notices under Regulation P, in their credit card solicitation disclosures, and certain TILA closed–end credit disclosures and Consumer Leasing Act disclosures.

Industry commenters assert that in some cases, such as credit card account opening disclosures, consumers can better understand how an account operates when required disclosures are interspersed among other contract terms. The commenters also assert that certain methods for making federal disclosures more conspicuous—for example, increased font sizes and margins—would lengthen documents and could make consumers less inclined to read them in some cases. Because credit card and deposit account agreements can be lengthy and complex, and in small type size, some members of the Board's Consumer Advisory Council urged the Board to consider different approaches to making disclosures more useful to consumers, such as requiring ''executive summaries'' of more important terms to ensure that the key terms are highlighted.

Compliance Burden. Industry commenters believe that examples contained in the December 2003 proposed guidance about how disclosures can be made clear and conspicuous, although not intended to be mandatory, would effectively be viewed as legal requirements, necessitating the review and redesign of all disclosure documents. Most industry commenters claim that the cost to review, revise, and mail disclosure documents to comply with each example would be substantial.

Industry commenters are particularly concerned about the potential cost of complying with the typeface and type size example in the proposed staff commentary which states that, as to type size: ''12–point type generally meets the conspicuous standard, but disclosures printed in less than 12–point type do not automatically violate the standard.'' The commenters generally assert that under this guidance 12–point type would become a de facto minimum requirement and that meeting it would be costly because federal consumer disclosures often use smaller type.

The December 2003 proposed guidance also states that disclosures printed in type less than 8 points would likely be too small to satisfy the clear and conspicuous standard. Industry commenters noted that this guidance could result in costly changes because it is common for some disclosures to be printed in type smaller than 8 points, such as credit card agreements and the notice of billing rights that often appears on the reverse side of monthly statements of account activity. See 12 CFR § 205.8(b), § 226.9(a)(2).

Industry concerns about litigation risks. The December 2003 proposed staff commentary provides examples of clear and conspicuous disclosures, such as the use of ''short explanatory sentences'' and ''everyday words'' whenever possible, ''wide margins and ample line spacing,'' and ''distinctive type size, style, or graphic devices.'' Industry commenters assert that these examples create vague standards subject to differing interpretations, and that institutions would potentially be liable in private lawsuits filed by consumers who allege violations under Regulations B, E, M, and Z. Although these examples are used in Regulation P, as commenters note, violations of Regulation P do not give rise to claims by consumers in private litigation. Some industry commenters urged the Board to review individual disclosures and address any specific problems identified with the particular disclosures instead of establishing standards and guidance of general applicability.

Specific Concerns of Consumer Advocates

Comment letters received from individual consumers and consumer groups generally supported the December 2003 proposed ''clear and conspicuous'' standard. Consumer representatives believe, however, that the Board's proposed interpretation of ''clear'' is not sufficient and they suggest that the Board clarify that a disclosure is not clear if it is ''capable of more than one plausible interpretation.'' Consumer representatives also suggest that the Board amend the proposed example in the staff commentary to state that 10 points, instead of 8 points, should be the threshold below which type is likely to be deemed too small under the standard.

III. Withdrawal of the Proposals and Plan for Reviewing Individual Disclosures

The Board is withdrawing the December 2003 proposals to establish a uniform standard for ''clear and conspicuous'' disclosures under Regulations B, E, M, Z, and DD, in response to the concerns summarized above. Instead of adopting general definitions or standards that would apply across the five regulations, the Board intends to focus on individual disclosures and to consider ways to make specific improvements to the effectiveness of each disclosure. As noted above, some commenters supported this approach. In reviewing individual disclosures, the Board could consider both the content and format of the disclosures, and the Board could elect to make changes to the regulatory requirements as well as to the regulation's model forms.

The effort to review individual disclosures will be undertaken in connection with the Board's periodic review of its regulations, commencing with the issuance later this year of an advance notice of proposed rulemaking to review the rules for open–end credit accounts under the Truth in Lending Act and Regulation Z. The notice will seek comment on ways to make disclosures required to be provided at account–opening and on periodic statements more understandable and noticeable. Improved TILA disclosures and the standards used to develop them could serve as models for improving disclosures required under the other regulations. The Board's review of individual disclosures would continue with reviews of Regulation DD and Regulation E, which are scheduled to commence in 2005 and 2006 respectively.

Although the December 2003 proposals are withdrawn, they reflect principles that institutions may find useful in developing disclosures that are clear and conspicuous. Similarly, the proposals reflect approaches that will help inform the Board's review of individual disclosures in connection with its periodic review of its regulations. Clear, concise sentences that use definite, concrete, everyday words and active voice and avoid legal and highly technical business terminology foster consumer understanding of disclosures. Disclosures are more noticeable when printed in a typeface and type size that are easy to read. Particularly in lengthy disclosure documents, the use of plain–language headings that call attention to the substance of particular provisions improves customers' ability to navigate through the document or later review particular provisions. Readily understandable disclosures also reduce costs associated with frequent customer inquiries, customer complaints and litigation.

By order of the Board of Governors of the Federal Reserve System, June 22, 2004.

Jennifer J. Johnson,

Secretary of the Board

[FR Doc. 04–14504 Filed 6–24–04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–117307–04]

RIN 1545–BD27

Stock Held by Foreign Insurance Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the determination of income of foreign insurance companies that is effectively connected with the conduct of a trade or business within the United States. The regulation provides that the exception to the asset-use test for stock shall not apply in determining whether the income, gain, or loss from portfolio stock held by foreign insurance companies constitutes effectively connected income.

DATES: Written or electronic comments and requests for a public hearing must be received by September 23, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–117307–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–117307–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–117307–04).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Sheila Ramaswamy, at (202) 622–3870; concerning submissions and delivery of comments, Robin Jones, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

In 1992, the Treasury Department and the IRS published proposed regulations under section 864 providing that stock is not treated as an asset used in, or held for use in, the conduct of a trade or business in the United States. Proposed § 1.864–4(c)(2)(ii)(C). The notice of proposed rulemaking solicited comments regarding the appropriate treatment of income from portfolio stock investments of insurance companies. The Treasury Department and the IRS published final regulations in 1996 which adopted the general rule in the proposed regulations that stock is not treated as an asset used in, or held for use in, the conduct of a U.S. trade or business. TD 8657(1996–1 C.B. 153). The final regulations reserved on the treatment of stock held by a foreign insurance company. § 1.864–4(c)(2)(iii)(b). This proposed regulation sets forth circumstances in which stock held by a foreign insurance company is not subject to the general rule in § 1.864–4(c)(2)(iii)(a), which provides that stock is not an asset used in a U.S. trade or business.

Explanation of Provisions

In the case of a foreign corporation engaged in a trade or business within the United States during the taxable year, section 864(c)(2) generally provides rules for determining whether certain fixed or determinable, annual or periodical income from sources within the United States or gain or loss from sources within the United States from sale or exchange of capital assets is income effectively connected with the conduct of a trade or business in the United States. Section 864(c)(2). In making this determination, the factors taken into account include whether (a) the income, gain or loss is derived from assets used in or held for use in the conduct of such trade or business (the asset-use test), or (b) the activities of such trade or business were a material factor in the realization of such income, gain or loss. Section 864(c)(2). Section 1.864–4(c)(2)(iii)(a) generally provides that stock of a corporation (whether domestic or foreign) is not an asset used in or held for use in the conduct of a trade or business in the United States except as provided in (c)(2)(iii)(b). Section 1.864–4(c)(2)(iii)(b) entitled ''Stock Held by Foreign Insurance Companies'' is reserved.

Insurance companies hold investment assets, such as stocks and bonds, to fund their obligations to policyholders and to meet their surplus (capital) requirements. Thus, stock held in an