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FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-1025]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Rules Regarding Delegation of Authority (12 CFR Part 265) pursuant to sections 11(i) and (k) of the Federal Reserve Act (12 U.S.C. 248(i) and (k)). Specifically, the Board is revising and expanding the delegation of authority to the Director of Division of Consumer and Community Affairs to include: issuing interpretations under the Fair Credit Reporting Act, adjusting the dollar amount to determine coverage under the Home Ownership and Equity Protection Act, adjusting the depository institution exemption threshold under the Home Mortgage Disclosure Act, making certain determinations under the Community Reinvestment Act regulations, and holding public hearings on financial service issues in keeping with congressional mandates.

EFFECTIVE DATE: November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Pamela Morris Blumenthal, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-3667; for users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

Section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) provides that the Board may delegate any of its functions, other than those relating to rulemaking or pertaining principally to monetary and credit policies, to members or

employees of the Board. Section 11(i) authorizes the Board to make rules and regulations necessary to enable the Board to perform its duties effectively.

Several consumer protection statutes impose a number of duties on the Board. These include issuing interpretations and applying formulas for determining exemption from or application of a statutory provision. The Board is delegating authority for the tasks described below to the Director of Division of Consumer and Community Affairs (DCCA) to enable the Board to fulfill its responsibilities more efficiently by eliminating the need for Board review of certain technical matters and administrative duties.

Delegation of the responsibilities described below does not relate to rulemaking or monetary and credit policies and is consistent with previous Board practices with respect to interpretations and actions required under consumer protection statutes.

II. Analysis of Revisions

Clarifications to Authority to Issue Examination Manuals, Forms, and Other Materials

The following clarifying revisions are being made to the authority delegated to the DCCA Director: (1) in § 265.9(a), the text has been clarified and the Truth in Savings Act has been added to the list of statutes for which the Director may issue manuals, forms, and other materials; (2) in § 265.9(a)(1), the titles of acts encompassed in the statutory citations have been added; (3) a new paragraph 265.9(a)(8) has been added to reference the provisions of the Truth in Savings Act; and (4) in § 265.9(c)(1), (c)(4) and (c)(5), the text has been clarified by adding a reference to the particular section of the controlling regulations.

Interpretations under the Fair Credit Reporting Act

Section 621(e) of the Fair Credit Reporting Act (FCRA; 15 U.S.C. 1681s(e)) authorizes the Board to issue interpretations of the FCRA as it applies to depository institutions and their holding companies and affiliates. The Board is directed to consult with the other federal financial supervisory agencies in connection with such interpretations.

The FCRA is part of the Consumer Credit Protection Act that encompasses

statutes such as the Truth in Lending Act (15 U.S.C. 1601-1667e) and the Equal Credit Opportunity Act (15 U.S.C. 1691-1691f). This delegation parallels authority delegated to DCCA officials to issue official staff interpretations of the regulations. (See 12 CFR part 226, App. C; 12 CFR part 202, App. D, respectively.) (Unlike TILA, the ECOA, and several other statutes, the FCRA does not assign the Board or any other agency the authority to issue implementing regulations.) Delegating interpretive authority enables the Board to provide guidance more efficiently by eliminating the need for Board review of minor matters and technical issues.

Annual adjustments under TILA and HMDA

TILA requires creditors to disclose credit terms. TILA is implemented by the Board's Regulation Z (12 CFR Part 226). The Home Ownership and Equity Protection Act of 1994 (Pub. L. 103-325, 108 Stat. 2160) amended TILA to include additional disclosure requirements and restrictions for home-secured loans with total points and fees exceeding the greater of \$400 or 8 percent of the total loan amount. Congress directed the Board to adjust the \$400 amount annually effective January 1 based on the annual percentage change in the Consumer Price Index (CPI) as reported on June 1 of the year preceding the adjustment. 15 U.S.C. 1602(aa)(3). Section 226.32(a)(1)(ii) of Regulation Z implements the statutory requirement.

The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801-2810) requires most mortgage lenders located in metropolitan statistical areas to collect data about their housing-related lending activity. The Board's Regulation C (12 CFR Part 203) implements HMDA. Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, 110 Stat. 3009) amended HMDA to modify the exemption threshold for small depository institutions. The amendments direct the Board to adjust the depository institution exemption threshold annually based on the annual percentage change in the CPI for Urban Wage Earners and Clerical Workers. Section 203.3(a)(1)(ii) of Regulation C sets forth the formula for determining the annual adjustment.

The Board is delegating implementation of these annual adjustments, which require application of a mathematical formula, to the Director of DCCA.

Community Reinvestment Act determinations

The Community Reinvestment Act (12 U.S.C. 2901–2907) requires the federal financial supervisory agencies to assess how depository institutions are meeting the credit needs of their communities in connection with the examination of each institution by its regulator. Each agency is authorized to issue regulations implementing the act. Regulation BB (12 CFR part 228) sets forth the standards the Board will apply in evaluating a bank's performance in meeting its community's credit needs.

Section 228.25 of Regulation BB permits the Board to approve or disapprove a bank's request to be designated as a wholesale or limited-purpose bank, and to revoke such designation as appropriate. In addition, the Board may approve or disapprove a bank's strategic plan submitted pursuant to section 228.27. These tasks require application of criteria established in the regulation. The Board is delegating authority to make these determinations to the Director of DCCA to implement review of proposed strategic plans and to respond to designation requests without the need for Board review.

Public hearings on consumer law issues

The Congress on occasion directs the Board to conduct public hearings or other proceedings regarding consumer law issues. For example, the Riegle Community Development and Regulatory Improvement Act of 1994 required the Board to hold hearings on home-equity lending within two years and periodically thereafter. The Board is delegating to the Director of DCCA the authority to arrange and conduct these proceedings in keeping with congressional mandates.

III. Public Comment Not Required

The Administrative Procedures Act provides that notice and opportunity for public comment are not required for rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(3)(A). Since the regulatory changes described above are procedural and do not constitute a substantive rule subject to the requirements of section 553(b) of the Administrative Procedures Act, the Board, for good cause, finds that notice and public comment in connection with this amendment are unnecessary.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set forth above, the Board amends part 265 in chapter II of title 12 of the Code of Federal Regulations as set forth below:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

2. Section 265.9 is amended by revising paragraphs (a) introductory text, (a)(1), (c)(1), (c)(4), and (c)(5), and adding new paragraphs (a)(8) and (d) through (g). The revisions and additions read as follows:

§ 265.9 Functions delegated to the Director of Division of Consumer and Community Affairs.

* * * * *

(a) *Issuing examination manuals, forms, and other materials.* To issue examination or inspection manuals; report, agreement, and examination forms; examination procedures, guidelines, instructions, and other similar materials pursuant to: section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)); sections 108(b), 621(c), 704(b), 814(c), and 917(b) of the Consumer Credit Protection Act (15 U.S.C. 1607(b), 1681s(b), 1691c(b), 1692(l) and 1693o(b)); section 305(c) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(c)); section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)); section 808(c) of the Civil Rights Act of 1968 (42 U.S.C. 3608(c)); section 270(b) of the Truth in Savings Act (12 U.S.C. 4309); and section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)). The foregoing manuals, forms, and other materials are for use within the Federal Reserve System in the administration of enforcement responsibilities in connection with:

(1) Sections 1–200 and 501–921 of the Consumer Credit Protection Act (15 U.S.C. 1601–1693r), in regard to the Truth in Lending Act, the Consumer Leasing Act, the Equal Credit Opportunity Act, the Electronic Fund Transfer Act, the Fair Credit Reporting Act and the Fair Debt Collection Practices Act;

(8) Sections 261–274 of the Truth in Savings Act (12 U.S.C. 4301–4313).

(c) *Determining inconsistencies between state and federal laws.* * * *

(1) Sections 111, 171(a) and 186(a) of the Truth in Lending Act (15 U.S.C. 1610(a), 1666j(a), 1667e(a)) and § 226.28 of Regulation Z (12 CFR part 226) and § 213.7 of Regulation M (12 CFR part 213);

* * * * *

(4) Section 306(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2805(a)) and § 203.3 of Regulation C (12 CFR part 203); and

(5) Section 273 of the Truth in Savings Act (12 U.S.C. 4312) and § 230.1 of Regulation DD (12 CFR part 230).

(d) *Interpreting the Fair Credit Reporting Act.* To issue interpretations pursuant to section 621(e) of the Fair Credit Reporting Act (15 U.S.C. 1681s(e));

(e) *Annual adjustments.* To adjust as required by law:

(1) The amount specified in section 103(aa)(1)(B)(ii) of the Truth in Lending Act and § 226.32(a)(1)(ii) of Regulation Z (12 CFR part 226), relating to mortgages bearing fees above a certain amount in accord with section 103(aa)(3) of that act (15 U.S.C. 1602(aa)); and

(2) The amount specified in section 309(b)(1) of the Home Mortgage Disclosure Act (12 U.S.C. 2808(b)(1)) and § 203.3(a)(1)(ii) of Regulation C (12 CFR part 203) relating to the asset threshold above which a depository institution must collect and report data.

(f) *Community Reinvestment Act determinations.* To make determinations, pursuant to section 804 of the Community Reinvestment Act (12 U.S.C. 2903), approving or disapproving:

(1) Strategic plans and any amendments thereto pursuant to § 228.27(g) and (h) of Regulation BB (12 CFR part 228); and

(2) Requests for designation as a wholesale or limited purpose bank or the revocation of such designation, pursuant to § 228.25(b) of Regulation BB (12 CFR part 228).

(g) *Public hearings.* To conduct hearings or other proceedings required by law, concerning consumer law or other matters within the responsibilities of the Division of Consumer and Community Affairs, in consultation with other interested divisions of the Board where appropriate.

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By order of the Board of Governors of the Federal Reserve System, November 20, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31508 Filed 11–24–98; 8:45 am]

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