

# RESCINDED

Office of Thrift Supervision  
Department of the Treasury

December 10, 2009

**Transmittal**

**TR-442**

This rescission does not change the applicability of the conveyed document. To determine the applicability of the conveyed document, refer to the original issuer of the document.



Federal Register, Vol. 74, No. 223, pp. 60143-60153

**Number TR-442**

On November 20, 2009 the Board of Governors of the Federal Reserve System published for public comment an interim final rule amending Regulation Z. The interim rule would implement Section 131(g) of the Truth in Lending Act (TILA).

■ 8. Amend Appendix A to part 325 by revising footnote 39 to read as follows:

**Appendix A to Part 325—Statement of Policy on Risk-Based Capital**

\* \* \* \* \*  
 II \* \* \*  
 C. \* \* \*  
 \* \* \* \* \*

<sup>39</sup>This category would also include a first-lien residential mortgage loan on a one-to-four family property that was appropriately assigned a 50 percent risk weight pursuant to this section immediately prior to modification (on a permanent or trial basis) under the Home Affordable Mortgage Program established by the U.S. Department of Treasury, so long as the loan, as modified, is not 90 days or more past due or in nonaccrual status and meets other applicable criteria for a 50 percent risk weight. In addition, real estate loans that do not meet all of the specified criteria or that are made for the purpose of property development are placed in the 100 percent risk category.

\* \* \* \* \*

**Department of the Treasury  
 Office of Thrift Supervision**

*12 CFR Chapter V*

■ For reasons set forth in the common preamble, the Office of Thrift Supervision amends part 567 of Chapter V of title 12 of the Code of Federal Regulations as follows:

**PART 567—CAPITAL**

■ 9. The authority for citation for part 567 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note)

**PART 567—CAPITAL**

■ 10. Section 576.1 is amended in the definition *Qualifying mortgage loan* by revising paragraph (4) to read as follows

**§ 567.1 Definitions.**

\* \* \* \* \*  
*Qualifying mortgage loan*  
 \* \* \* \* \*

(4) A loan that meets the requirements of this section prior to modification on a permanent or trial basis under the U.S. Department of Treasury's Home Affordable Mortgage Program may be included as a *qualifying mortgage loan*, so long as the loan is not 90 days or more past due.

\* \* \* \* \*

Dated: November 10, 2009.

**John C. Dugan,**  
*Comptroller of Currency.*

By order of the Board of Governors of the Federal Reserve System, November 12, 2009.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

Dated at Washington DC, this 12th day of November 2009.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**  
*Assistant Executive Secretary.*

Dated: October 29, 2009.

By the Office of the Thrift Supervision.

**John E. Bowman,**  
*Acting Director.*

[FR Doc. E9-27776 Filed 11-19-09; 8:45 am]

**BILLING CODE 6714-01-P; 6210-01-P; 4810-33-P; 6720-01-P**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 226**

[Regulation Z; Docket No. R-1378]

**Truth in Lending**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interim final rule; request for public comment.

**SUMMARY:** The Board is publishing for public comment an interim final rule amending Regulation Z (Truth in Lending). The interim rule implements Section 131(g) of the Truth in Lending Act (TILA), which was enacted on May 20, 2009, as Section 404(a) of the Helping Families Save Their Homes Act. TILA Section 131(g) became effective immediately upon enactment and established a new requirement for notifying consumers of the sale or transfer of their mortgage loans. The purchaser or assignee that acquires the loan must provide the required disclosures in writing no later than 30 days after the date on which the loan is sold or otherwise transferred or assigned. The Board is issuing this interim rule, effective immediately upon publication, so that parties subject to the statutory requirement have guidance on how to comply. However, to allow time for any necessary operational changes, compliance with the interim final rule is optional for 60 days from the date of publication; during this period, covered persons would continue to be subject to the statute's requirements. The Board seeks comment on all aspects of the interim rule.

**DATES:** This interim final rule is effective November 20, 2009; however, to allow time for any necessary

operational changes, compliance with this interim final rule is optional until January 19, 2010. Comments must be received on or before January 19, 2010.

**ADDRESSES:** You may submit comments, identified by Docket No. R-1378, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov).

Include the docket number in the subject line of the message.

- **Fax:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Paul Mondor, Senior Attorney, or Stephen Shin, Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, seeks to promote the informed use of consumer credit by requiring disclosures about its costs and terms. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. TILA directs the Board to prescribe regulations to carry out its purposes and specifically authorizes the Board, among other things, to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such

adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with TILA, or prevent circumvention or evasion of TILA. 15 U.S.C. 1604(a). TILA is implemented by the Board's Regulation Z, 12 CFR part 226. An Official Staff Commentary interprets the requirements of the regulation and provides guidance to creditors in applying the rules to specific transactions. See 12 CFR part 226, Supp. I.

On May 20, 2009, the Helping Families Save Their Homes Act of 2009 (the "2009 Act") was signed into law. Public Law 111-22, 123 Stat. 1632. Section 404(a) of the 2009 Act amended TILA to establish a new requirement for notifying consumers of the sale or transfer of their mortgage loans. The purchaser or assignee that acquires the loan must provide the required disclosures no later than 30 days after the date on which the loan is acquired. This provision is contained in TILA Section 131(g), 15 U.S.C. 1641(g), which applies to any consumer credit transaction secured by the principal dwelling of a consumer. Consequently, the disclosure requirements in Section 131(g) apply to both closed-end mortgage loans and open-end home equity lines of credit (HELOCs).

Section 131(g) became effective immediately upon enactment on May 20, 2009, and did not require the issuance of implementing regulations. Mortgage loans sold or transferred on or after that date became subject to the requirements of Section 131(g), and failure to comply can result in civil liability under TILA Section 130(a). See 15 U.S.C. 1640(a). Accordingly, as discussed below, the Board finds there is good cause for issuing an interim rule that is effective immediately upon publication, so that parties subject to the rule have guidance on how to interpret and comply with the statutory requirements.

Under the Real Estate Settlement Procedures Act (RESPA), consumers must be notified when the servicer of their mortgage loan has changed.<sup>1</sup> The 2009 Act's legislative history reflects that, in addition to the information provided under RESPA, the Congress intended to provide consumers with information about the identity of the owner of their mortgage loan. In some cases, consumers that have an extended right to rescind the loan under TILA Section 125, 15 U.S.C. 1635, can assert

that right against the purchaser or assignee. See TILA Section 131(c), 15 U.S.C. 1641(c). Among other things, the 2009 Act seeks to ensure that consumers attempting to exercise this right know the identity of the assignee and how to contact the assignee or its agent for that purpose. See 155 Cong. Rec. S5098-99 (daily ed. May 5, 2009); 155 Cong. Rec. S5173-74 (daily ed. May 6, 2009). The legislative history indicates, however, that TILA Section 131(g) was not intended to require notice when a transaction "does not involve a change in the ownership of the physical note," such as when the note holder issues mortgage-backed securities but does not transfer legal title to the loan. 155 Cong. Rec. S5099.

## II. Summary of the Interim Final Rule

Consistent with the legislative intent, this interim final rule implements Section 404(a) of the 2009 Act by applying the new disclosure requirements to any person or entity that acquires ownership of an existing consumer mortgage loan, whether the acquisition occurs as a result of a purchase or other transfer or assignment. A person is covered by the rule only if the person acquires legal title to the debt obligation. Although TILA and Regulation Z generally apply only to persons to whom the obligation is initially made payable and that regularly engage in extending consumer credit, Section 404(a) and the interim final rule apply to persons that acquire mortgage loans without regard to whether they also extend consumer credit by originating mortgage loans. However, the interim final rule applies only to persons that acquire more than one mortgage loan in any 12-month period.

To comply with the interim rule, a covered person must mail or deliver the required disclosures on or before the 30th day following the date that the covered person acquired the loan. The disclosure need not be given, however, if the covered person transfers or assigns the loan to another party on or before that date. This exception seeks to prevent the confusion that could result if consumers receive outdated contact information for parties that no longer own their loan. For example, a covered person that acquires a mortgage loan on March 1 must mail or deliver the disclosures on or before March 31. However, if the covered person sells or assigns the loan to a third party on March 31 (or earlier), the covered person need not provide the disclosures, but subsequent purchasers would have to comply with the rule.

## III. Legal Authority

### General Rulemaking Authority

As noted above, TILA Section 105(a) directs the Board to prescribe regulations to carry out the act's purposes. 15 U.S.C. 1604(a). Section 404 of the 2009 Act became effective immediately without any requirement that the Board first issue implementing rules. Nevertheless, the Board finds that the legislative purpose of Section 404 will be furthered and its effectiveness enhanced by the issuance of rules that specify the manner in which covered persons can comply with its provisions. In addition, the Board believes that implementing regulations will facilitate covered persons' compliance with the statutory provisions.

TILA also specifically authorizes the Board, among other things, to:

- Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).

- Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).

### Authority To Issue Interim Final Rules Without Notice and Comment

The Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice before promulgation of regulations. See 5 U.S.C. 553(b). Unless notice or a hearing is specifically required by statute, however, the APA also provides an exception "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B).

As an initial matter, neither TILA nor the 2009 Act specifically requires the Board to provide notice or a hearing with respect to this rulemaking. See TILA Section 105(a), 15 U.S.C. 1604(a). In addition, the Board finds that there is good cause to conclude that providing notice and an opportunity to comment before issuing this interim final rule

<sup>1</sup> RESPA is implemented by Regulation X, 24 CFR part 3500, which is issued by the Department of Housing and Urban Development (HUD).

would be impracticable and contrary to the public interest. The statutory requirements in Section 404 became effective upon enactment on May 20, 2009, as noted above. Covered persons must comply with those requirements even if the Board does not issue this interim final rule.

This interim final rule implements the requirements contained in the 2009 Act but also interprets the statutory text to resolve issues and ambiguities not directly addressed by the statute. Providing notice and opportunity for comment on these matters before issuing these rules is not in the public interest because the legislation was effective upon enactment. As a result, persons covered by Section 404(a) already must be in compliance with the law or face potential liability for violations. The Board is issuing final rules at this time so that covered persons receive immediate guidance on how they can comply with the law in a manner that effectuates its purposes and avoids potential liability. The Board's issuance of a notice of proposed rulemaking for public comment would not serve this purpose because it would not provide certainty regarding a covered person's compliance obligations until the rules were finalized. By clarifying that Section 404(a) of the 2009 Act covers persons that acquire mortgage loans even if they are not "creditors" as defined under TILA, the interim final rule also ensures that consumers will receive the notice that was intended by the legislation. Consequently, the Board finds that the use of notice and comment procedures before issuing these rules would be impracticable and would not be in the public interest. Interested parties will still have an opportunity to submit comments in response to this interim final rule.

#### *Authority To Issue Interim Final Rules That Are Effective Immediately*

This interim final rule is effective upon publication in the **Federal Register**. Institutions may rely on the rules immediately to ensure they are complying with the statutory requirements. However, to allow time for any necessary operational changes, compliance with the interim final rules is optional until January 19, 2010. During this 60-day period, institutions continue to be subject to the statute's requirements.

The APA generally requires that rules be published not less than 30 days before their effective date. See 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA provides an exception when "otherwise

provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). Similarly, Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 generally requires that new regulations and amendments to existing regulations prescribed by a Federal banking agency, which impose additional reporting, disclosure, or other new requirements on insured depository institutions, take effect on the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form.<sup>2</sup> There is an exception, however, when "the agency determines, for good cause published with the regulation, that the regulations should become effective before such time." 12 U.S.C. 4802(b)(1)(A).

The interim final rule implements statutory disclosure requirements that have been in effect since May 20, 2009. For the reasons discussed above, the Board finds there is good cause to make these rules effective immediately. These rules are intended to interpret and clarify the statutory requirements and provide compliance guidance. The Board will consider public comments on the provisions before adopting further rules.

Finally, TILA Section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required shall have an effective date no earlier than "that October 1 which follows by at least six months the date of promulgation." To the extent that the interim rule contains disclosure requirements that are already in effect under the statute, Section 105(d) does not apply. Moreover, the Board believes that the effective date mandated by the 2009 Act for the specific disclosures required under section 404 overrides the general provision in TILA Section 105(d).

#### **IV. Section-by-Section Analysis**

##### *Section 226.39—Mortgage Transfer Disclosures*

###### 39(a) Scope

Section 226.39(a) defines the scope of the interim rule's coverage. The disclosure requirements of § 226.39 apply to any "covered person," with certain exceptions that are specified in the rule. For purposes of the rule, a "covered person" includes any natural person or organization (as defined in section 226.2(a)(22) of the regulation) that acquires more than one existing

mortgage loan in any 12-month period. Consistent with the statute, the rule applies to all consumer mortgage transactions secured by the principal dwelling of a consumer, whether the transaction is a closed-end loan or an open-end line of credit.

Generally, TILA and Regulation Z apply to parties that regularly extend consumer credit. However, Section 404(a) of the 2009 Act is not limited to persons that extend credit by originating loans. Section 404(a) imposes the disclosure duty on the "creditor that is the new owner or assignee of the debt." The Board believes that to give effect to the legislative purpose, the term "creditor" in Section 404(a) must be construed to refer to the owner of the debt following the sale, transfer or assignment, without regard to whether that party would be a "creditor" for other purposes under TILA or Regulation Z. The Board declines to limit Section 404(a) to parties that originate consumer loans because such an interpretation would exempt a significant percentage of mortgage transfers which are acquisitions by secondary market investors that do not extend consumer credit and are not "creditors" for purposes of other provisions of Regulation Z.

The Board also believes that Section 404(a) of the 2009 Act does not alter the definition of "creditor" as currently used in TILA or Regulation Z. Thus, the fact that a person purchases mortgage loans and provides disclosures under § 226.39 does not by itself make that person a "creditor" for purposes of TILA and Regulation Z (even if the disclosure provided under Section 404(a) uses the term "creditor"). Accordingly, in describing the persons subject to the requirements of § 226.39, the interim final rule uses the term "covered person" rather than the term "creditor."

Under the interim final rule, the disclosure requirements in § 226.39 apply only to persons that acquire more than one consumer mortgage transaction in any 12-month period. Generally, TILA and Regulation Z cover only parties that are regularly engaged in consumer credit transactions, who are expected to have the capacity to put systems in place to ensure compliance with the rules. There is no indication in the legislative history that Section 404 was intended to apply more broadly. For example, individual homeowners might choose to facilitate the sale of their home by providing seller financing and accepting the buyer's promissory note for a portion of the purchase price. At a later date, ownership of the debt obligation might be transferred to

<sup>2</sup> See Public Law 103-325, Title III, § 302(b), Sept. 23, 1994, 108 Stat. 2214, codified at 12 U.S.C. 4802(b).

another family member or to a trust for estate planning purposes, or might be transferred to another person if the original note holder dies. The Board believes that a formal notice under Section 404 is not needed in situations involving individual transfers because the acquiring party is likely to provide adequate information to borrowers to ensure that they know to whom the loan payments should be made.

Accordingly, to prevent undue burden on individuals under the interim rule, a person who acquires only one existing mortgage loan in any 12-month period is not a covered person. The Board intends to exclude persons who are not regularly engaged in the business of purchasing or investing in consumer mortgages loans and are involved in such transactions infrequently and would not have systems in place to comply. The Board specifically solicits comment on this definition and whether the scope of the interim final rule's coverage is appropriate, or whether a different standard should apply in determining which persons must comply with the disclosure requirement in § 226.39. For example, comment is requested on whether the Board should use the same standard that applies in determining whether a person is regularly engaged in extending consumer credit, which would limit the application of § 226.39 to persons that have acquired more than five mortgage loans in the preceding or current calendar year. *See* § 226.2(a)(17)(i), footnote 3.

To become a "covered person" subject to § 226.39, a person must become the owner of an existing mortgage loan by acquiring legal title to the debt obligation. Consequently, § 226.39 does not apply to persons who acquire only a beneficial interest in the loan or a security interest in the loan, such as when the owner of the debt obligation uses the loan as security to obtain financing and the party providing the financing obtains only a security interest in the loan. Section 226.39 also does not apply to a party that assumes the credit risk without acquiring legal title to the loans. Accordingly, an investor who purchases an interest in a pool of loans (such as mortgage-backed securities, pass-through certificates, participation interests, or real estate mortgage investment conduits) but does not directly acquire legal title in the underlying mortgage loan, is not covered by § 226.39.

The Board has received a letter from the Department of Housing and Urban Development's Office of General Counsel, in its capacity as legal counsel for the Government National Mortgage

Association (Ginnie Mae), seeking to clarify Ginnie Mae's status under Section 404(a) of the 2009 Act. Ginnie Mae guarantees securities that are collateralized by mortgage loans. HUD's letter states that, as the guarantor of these securities, Ginnie Mae obtains equitable title in the mortgage loans but further states that the issuers of the securities retain legal title to the loans that collateralize the securities. According to HUD, legal title to the loans is not conveyed to Ginnie Mae unless the issuer of the securities defaults in its obligations. If the securities issuer defaults, Ginnie Mae can immediately extinguish the securities issuer's interest in the loans and take legal title. Based on HUD's representations and legal opinion regarding Ginnie Mae's status, the Board believes that the requirements of § 226.39 do not apply to Ginnie Mae until it finds the issuer in default and acquires legal title to the loans.

Section 131(f) of TILA addresses the treatment of loan servicers under the assignee liability provisions in Section 131 as well as the provisions of Section 131(g) which were added by the 2009 Act. Under TILA section 131(f)(2), a party servicing the mortgage loan is not treated as the owner of the obligation if the obligation was assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Accordingly, the requirements of § 226.39 do not apply to a loan servicer in this circumstance, even if the servicer holds legal title to the loan.

Some industry representatives have requested clarification whether a disclosure under § 226.39 is required in the case of a merger, acquisition, or reorganization. The Board believes that the statute covers acquisitions that occur in these situations when ownership of the loan is transferred to a different legal entity. Accordingly, the interim final rule does not provide an exception for such transactions.

#### 39(b) Disclosure Required

Section 226.39(b) contains the general requirement for covered persons to provide the disclosures required under Section 404 of the 2009 Act, unless the exception specified in § 226.39(c) applies. The disclosures must be mailed or delivered to the consumer on or before the 30th calendar day following the date that the covered person acquires the loan. For purposes of this requirement, the date that the covered person acquires the loan is deemed to be the acquisition date that is recognized in the books and records of the acquiring party. If there is more than one covered

person, the interim rule provides that only one disclosure shall be given; the covered persons must determine among themselves which one of them will provide the disclosure. If there is more than one consumer, a covered person may mail or deliver the disclosures to any consumer who is primarily liable on the obligation.

The transfer of ownership of a mortgage loan is subject to the disclosure requirements of this section when the acquiring party is a separate legal entity from the transferor, even if the parties are affiliated entities. However, if a covered person acquires a mortgage loan and subsequently transfers the loan to another entity, the regulation does not prohibit the two entities from combining their disclosures on a single document. Comment 39(b)-2 clarifies how two entities may comply with the rules in certain circumstances by providing a single form that covers both entities. For example, a covered person that acquires a loan on August 31 might mail a single disclosure on or before September 30 with the knowledge that it will assign the loan to another entity on October 15. The covered person could mail a single disclosure providing the required information for both entities and indicating when the subsequent transfer will occur.

#### 39(c) Exceptions

To comply with the interim final rule, a covered person must mail or deliver the required disclosures on or before the 30th day following the date that the covered person acquired the loan. Section 226.39(c)(1) provides an exception, however, if the covered person transfers or assigns the loan to another party on or before that date. This exception is made pursuant to the Board's authority to make exceptions and exemptions under TILA Sections 105(a) and 105(f). 15 U.S.C. 1604(a), 1604(f). This exception seeks to prevent the confusion that could result if consumers receive outdated contact information for parties that no longer own their loans. For example, if a mortgage loan is originated on February 22 and the original creditor sells the loan on March 1 to a covered person, the covered person must mail or deliver the disclosures required by § 226.39 on or before March 31. However, under the exception in § 226.39(c)(1) the covered person would not be required to provide the disclosures if the loan is sold or otherwise transferred or assigned to a third party on or before March 31.

The Board specifically solicits public comment on the need for this exception and its scope. The Board believes that

this exception is necessary and proper to effectuate the purposes of Section 404 and to facilitate compliance. The Board is concerned about the potential for consumers to receive multiple disclosures, some of which contain information that is outdated and inaccurate by the time it is received. This can occur because during the normal securitization process, several legal entities may be created to serve as acquisition vehicles to hold the loan for a short period before delivering the loan to an entity that ultimately holds it for the investors. After origination, a loan might be assigned to one or more entities for only a few days before it is transferred to an entity that will hold it for a much longer time period.

The Board believes that consumers may be confused if they receive one or more notices on or around the 30th day identifying multiple parties that no longer own the loan. Consequently, the interim final rule requires notices to be provided only by a covered person that still owns the loan on the 30th day after the acquisition. Thus consumers would be likely to receive notices only from parties actually holding the loan as of that date. In contrast, notices sent by temporary holders would provide information that most consumers are unlikely to need or use and could create information overload for many consumers, thereby hindering their ability to determine which party should be contacted to address a particular concern. The Board believes that the disclosure of short-term holdings of the debt obligation that do not reflect the current ownership status at the time the consumer receives the notice would be of minimal value to consumers and does not provide meaningful disclosure consistent with the purposes of TILA or the 2009 Act. Thus, the Board believes that a regulatory exception adopted pursuant to TILA Section 105(a) would effectuate TILA's purposes and facilitate compliance.

The Board has also considered the relevant statutory factors in TILA Section 105(f). The Board believes that the Section 105(f) exemption is appropriate because the disclosure of ownership interests that are held less than the 30-day period would not provide a meaningful benefit to consumers in the form of useful information or protection. It would also complicate compliance and impose unnecessary burden and expense for persons that would be required to comply, that would not be outweighed by the benefits to consumers.<sup>3</sup> The

Board requests comment on whether the scope of this exemption is appropriate and whether the 30-day period should be shorter or longer.

In some cases, the original creditor or owner of the mortgage loan may sell or transfer the legal title to secure business financing, pursuant to a repurchase agreement that obligates the original creditor or owner to repurchase the loan within a short period, typically a month or less. Under § 226.39(c)(2) of the interim final rule, if the original creditor or owner does not recognize the transaction as a sale of the loan on its books and records for accounting purposes, the acquiring party is not subject to the disclosure requirements of § 226.39. However, if the transferor does not repurchase the mortgage loan, the acquiring party must make the disclosures required by § 226.39 within 30 days after the date that the transaction is recognized as an acquisition in its books and records. This exception is also being adopted pursuant to the Board's authority in TILA Sections 105(a) and 105(f). As with the exception in § 226.39(c)(1), the exception for repurchase agreements in § 226.39(c)(2) seeks to prevent consumer confusion from the receipt of outdated disclosures. The Board believes that providing disclosures for the transactions covered by the exception in § 226.39(c)(2) would not provide a meaningful benefit to consumers in the form of useful information or protection. The Board also believes that the disclosure of transfers that are subject to repurchase agreements would complicate compliance and impose unnecessary burden and expense for persons that would be required to comply, that would not be outweighed by the benefits to consumers. Comment is requested on this exception, and any unintended consequences that may result.

#### 39(d) Content of Required Disclosures

Section 226.39(d) sets forth the contents of the notice that must be

coverage of such transactions provides a meaningful benefit to consumers in light of specific factors. 15 U.S.C. 1604(f)(2). These factors, which the Board has reviewed, are (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

provided under this section. The disclosures must identify the loan that was acquired or transferred and, consistent with the statute, contain the following: (1) The identity, address, and telephone number of the covered person that owns the mortgage loan; (2) the date of the acquisition or transfer; (3) contact information that the consumer can use to reach an agent or party having authority to act on behalf of the covered person; (4) the location of the place where the transfer of the ownership of the debt is recorded.

*Identity, address, and telephone number.* Section 226.39(d)(1) requires acquiring parties to provide their name, as well as their address and telephone number. Under the interim final rule, the party identified must be the covered person who owns the mortgage loan, regardless of whether another party has been appointed to service the loan or otherwise serve as the covered person's agent. The covered person has the option of also providing an electronic mail address or Internet Web site address but is not required to do so.

Section 226.39(d)(1) provides that if there is more than one covered person, the required information must be provided for each of them. The Board specifically solicits comments on the benefits of this approach, or whether the identification of multiple parties may create confusion for consumers. Should there be limits on the number of covered persons identified and, if so, what limits would be appropriate consistent with the legislative intent?

*Acquisition date.* Section 226.39(d)(2) requires disclosure of the date that the covered person acquired the loan. For purposes of this section, this is defined as the date of acquisition recognized in the books and records of the covered person. The Board believes that this approach provides flexibility to accommodate a variety of circumstances in which the acquisition could occur.

*Agent's contact information.* Under § 226.39(d)(3), a covered person must identify and provide contact information for the agent or party having authority to act on behalf of the covered person. The notice must identify one or more persons who are authorized to receive legal notices on behalf of the covered person and resolve issues concerning the consumer's payments on the loan. However, contact information for an agent is not required to be provided under § 226.39(d)(3) if the consumer can use the information provided for the covered person provided under paragraph § 226.39(d)(1) for these purposes. Thus, the interim final rule implements the disclosure requirement in Section 404 but does not

<sup>3</sup> In exercising its exemption authority under Section 105(f), Board must determine whether

require that the owner of a loan designate an agent or other party for any specific purpose. The rule simply requires that the owner disclose contact information when there is such an agent, so that consumers can direct their inquiries to the appropriate party.

The Board recognizes that separate entities may be authorized by the owner of the loan to act on its behalf for different purposes. Identifying the party authorized to receive legal notices is intended to ensure that consumers have sufficient information to assert legal claims, including a right to rescind the loan, if applicable. However, a covered person might appoint a different agent to resolve loan servicing issues. In such cases, the covered person must provide contact information for each agent. If multiple agents are listed, the disclosure must state the extent to which the authority of each agent differs, for example, by indicating if only one of the agents is authorized to receive legal notices or only one is authorized to resolve issues concerning payments.

A covered person may comply with § 226.39(d)(3) by providing a telephone number on the written disclosure if the consumer can use the telephone number to obtain the address of the agent or other authorized person identified. This differs from the requirement in § 226.39(d)(1), which requires covered persons who acquire a loan to provide their name, address, and telephone number in all cases. The flexibility in § 226.39(d)(3) is intended to allow covered persons to use a single disclosure form that contains a nationwide toll-free telephone number, even though there may be different physical locations to which documents should be sent in different regions of the country. Comment is specifically solicited on this approach and whether both a telephone number and address for the agent or authorized representative should be required to be included on each disclosure under § 226.39(d)(3).

Comment 39(d)(3)–2 clarifies that the covered person has the option of also providing the agent's electronic mail address or internet web site address but is not required to do so.

**Recording location.** Section 404 requires that the disclosure state the location of the place where the transfer of ownership of the debt is recorded. When a mortgage loan is sold, however, the transfer in ownership of the debt instrument typically is not recorded in public records. The new owner's security interest in the property that secures the debt may or may not be recorded in the public land records or, if it is recorded, it may not yet be

recorded at the time the disclosure is sent.

Consistent with the statute, § 226.39(d)(4) of the interim final rules requires covered persons to disclose the location where their ownership of the debt is recorded. However, if the transfer of ownership has not been recorded in public records at the time the disclosure is provided, the covered person can comply with the rule by stating this fact. Whether or not the transfer of ownership has been recorded in public records at the time the disclosure is made, the disclosure may state that the transfer "is or may be recorded" at the specified location.

The covered person also has the option of disclosing the location where the covered person's *security interest* in the property is or may be recorded. In light of the fact that the transfer in ownership of the debt instrument usually is not recorded in public records, the Board specifically solicits comment on whether disclosure of the location where the security interest is recorded should be required.

Comment 39(d)(4)–2 clarifies that the covered person is not required to provide the postal address for the governmental office where the covered person's ownership interest is recorded or the name of the jurisdiction where the property is located. For example, it would be sufficient in all cases to disclose that the transaction is or may be recorded in the office of public land records or the recorder of deeds office "for the county or local jurisdiction where the property is located."

The Board has taken this approach after considering the relative costs and benefits of requiring that the disclosure provide more detailed information. Industry representatives have noted that this information may not be readily accessible to the acquiring party. A requirement to provide the name and address of the governmental office would require parties that provide such notices to develop and maintain a system for matching the property address to the correct governmental office, and keeping the database up to date with correct address information. The Board does not believe that this would provide substantial benefit to consumers because they presumably know the county or jurisdiction in which the property is located and can easily obtain the address of the governmental office from public directories or other sources. The Board solicits comments on the approach taken in the interim final rule and the relative costs and benefits of requiring more detailed disclosures about the

location where the lender's security interest is or may be recorded.

### 39(e) Optional Disclosures

Section 404 provides that the party acquiring a loan shall notify the borrower of "any other relevant information" regarding the new owner of the loan. The Board interprets this statutory language as permitting the Board to impose additional disclosure requirements to further the legislative purpose. Any additional disclosure requirements would be imposed by regulation after notice and comment. The Board does not believe that the statutory language requires covered persons to determine independently what additional information a reviewing court might subsequently determine to be legally relevant in order to avoid liability. Although the interim final rule does not contain any additional disclosure requirements, the Board solicits comment on whether the rule should include any such requirements. The Board also believes that, under the statutory language, covered persons are permitted, in their sole discretion, to include additional information that they might deem relevant or helpful to consumers, which is reflected in § 226.39(e) of the interim final rule. For example, the covered person may choose to inform consumers that the location where they should send mortgage payments has not changed.

## V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an initial and final regulatory flexibility analysis only when 15 U.S.C. 553 requires publication of a notice of proposed rulemaking. *See* 5 U.S.C. 603(a), 604(a). However, the Board has found good cause under 5 U.S.C. 553(b)(B) to conclude that, with respect to this interim final rule, publication of a notice of proposed rulemaking is impracticable and not in the public interest. Accordingly, the Board is not required to perform an initial or final regulatory flexibility analysis. Nonetheless, to solicit additional information from small entities subject to the interim final rule, the Board is publishing an initial regulatory flexibility analysis.

Based on its analysis and for the reasons stated below, the Board believes that this interim final rule will not have a significant economic impact on a substantial number of small entities. The Board invites comment on the effect of the interim final rule on small entities.

#### A. Reasons for the Interim Final Rule

As indicated above, the 2009 Act was signed into law on May 20, 2009. Section 404 amended TILA to establish a new requirement for notifying consumers of the sale or transfer of their mortgage loans. This requirement became effective immediately upon enactment on May 20, 2009, and did not require the issuance of implementing regulations. As discussed above, the Board believes there is good cause for an interim final rule so that parties subject to the rule have guidance on how to interpret and comply with the statutory requirements and consumers receive notices consistent with legislative intent.

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit.

#### B. Summary of 2009 Act

As described previously, the purchaser or assignee that acquires a loan must provide the required disclosures no later than 30 days after the date on which the loan is acquired. Section 226.39(c) of the rule provides an exception if the covered person transfers or assigns the loan to another party on or before that date. Section 226.39(d) sets forth the contents of the notice. Consistent with the statute, the interim final rule requires that the notice contain the following: (1) The identity, address, and telephone number of the covered person who owns the mortgage loan; (2) the acquisition date; (3) a mailing address and telephone number that the borrower can use to reach an agent of the covered person; and (4) the location where the covered person's interest in the property securing the loan is or may be recorded.

#### C. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** contains this information. The legal basis for the interim final rule is in TILA Sections 105(a), 105(f), 15 U.S.C. 1604(a), 1604(f). A more detailed discussion of the Board's rulemaking authority is set forth in the **SUPPLEMENTARY INFORMATION**.

#### D. Description of Small Entities to Which the Interim Final Rule Would Apply

The interim final rule would apply to all persons that acquire more than one existing mortgage loan in any 12-month period, other than servicers that take title solely as an administrative convenience to enable them to service the loans. The Board cannot identify with certainty the number of small entities that meet this definition. The Board can estimate, however, approximate numbers of small entities that purchase mortgage loans, as discussed below.

The Board can identify through data from Reports of Condition and Income ("call reports") approximate numbers of small depository institutions that would be subject to the interim final rules if they acquire more than one mortgage loan in a 12-month period. Approximately 16,345 depository institutions in the United States filed call report data in December of 2008, of which approximately 11,907 had total domestic assets of \$175 million or less and thus were considered small entities for purposes of the Regulatory Flexibility Act. Of 4231 banks, 565 thrifts and 7111 credit unions that filed call report data and were considered small entities, 4091 banks, 530 thrifts, and 4797 credit unions, totaling 9418 institutions, extended mortgage credit. For purposes of this analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks.

The Board cannot identify with certainty the number of small non-depository institutions because they do not file call reports. Neither can the Board determine with certainty how many of the 11,907 institutions identified above as small entities acquired mortgage loans in 2008. Although an estimated 9418 such institutions extended mortgage credit, the Board recognizes that not all entities that extend mortgage credit also acquire existing mortgage loans. Moreover, the reverse is also true: there are entities that acquire existing mortgage loans but do not extend mortgage credit.

The Board has another source of information, data obtained under the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.*; 12 CFR part 203. Based on loan purchases reported for 2008 under HMDA, the Board estimates that 553 of the reporting institutions engaged in more than one mortgage acquisition. The 8388 lenders covered by HMDA in 2008 accounted for the majority, but not all, of the home lending in the United States.

Accordingly, the 553 institutions that reported loan purchases in 2008 probably do not represent all mortgage acquirers; institutions must report loan purchases only if they are required to report under HMDA based on loan originations and assets. Nevertheless, the Board's experience has been that the HMDA data are reasonably representative of the whole mortgage market.

A total of 2,921,684 loan purchases were reported under HMDA in 2008 by entities reporting more than one purchase (and thus subject to the interim final rule). Of those loan purchases, 2,773,918 were reported by depository institutions. Of those depository institution loan purchases, 2,122,288 (76.5%) were reported by large depository institutions (assets greater than \$175 million), and 651,630 (23.5%) were reported by small depository institutions (assets of \$175 million or less). Of the 553 HMDA reporters reporting more than one loan purchase, 502 were depository institutions. Of those 502 depository institutions, 387 (77.1%) were large and 115 (22.9%) were small. Those 115 small depository institutions represent just slightly less than one percent (0.97%) of the 11,907 total small institutions estimated above from call report data.

A total of 147,766 loan purchases were reported under HMDA by non-depository institutions that reported more than one loan purchase in 2008. The Board cannot tell from the HMDA data how many of those loan purchases were reported by small entities. Neither can the Board tell how many of the 51 non-depository institutions that reported those loan purchases are small entities. If the relative shares among small and large non-depository institutions do not differ significantly from those among depository institutions, however, the shares for non-depository institutions can be estimated. On that basis, the Board estimates that 12 small non-depository institutions reported 34,725 loan purchases and that 39 large non-depository institutions reported 113,041 loan purchases (estimates are rounded to whole numbers).

Using the foregoing numbers from 2008 HMDA data for depository institutions and the foregoing estimates for non-depository institutions, the Board estimates the following numbers for all entities reporting under HMDA combined: of the 2,921,684 loan purchases reported by 553 entities reporting more than one purchase, 2,235,329 (76.5%) were reported by 426 large entities (77%), and 686,355

(23.5%) were reported by 127 small entities (23%). Based on these estimates, less than one-quarter of the institutions reporting covered loan purchases under HMDA were small entities, and less than one-quarter of the covered loan purchases reported were reported by small entities.

The foregoing data are not complete in many respects. Not all depository institutions that file call reports are reporters under HMDA, and not all HMDA reporters file call reports. Further, some unknown number of entities purchase more than one mortgage loan in any 12-month period and yet file neither call reports nor HMDA data; how many of those are small entities also is unknown. Nevertheless, if one assumes that the existing data are reasonably representative of the market as a whole, they present an overall picture of minimal economic impact on small entities. For all these reasons, the Board believes that the interim final rule will not have a significant economic impact on a substantial number of small entities.

#### *E. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The compliance requirements of the interim final rules are described in the **SUPPLEMENTARY INFORMATION**. As indicated above, the Board is adopting a new disclosure rule requiring that consumers receive notice when ownership of their mortgage loan is transferred. The Board is aware that numerous covered persons are already complying with these statutory provisions, which became effective on May 20, 2009. Therefore the additional burden imposed by the Board's rule itself is likely to be minimal. Furthermore, the information required to be provided is easily obtainable by the covered person. The covered person must provide contact information for itself and any agent (but is not required to designate an agent), may use the acquisition date in its own books and records, and may generally describe the location where the covered person's interest in the property securing the mortgage loan is or may be recorded. This information generally is already required by the statute.

Based on informal surveys of industry representatives and practices in effect, the Board understands that entities are likely to designate servicers as their agents. Servicers already respond to consumer requests on the behalf of covered persons. Therefore, other than providing the notice itself, covered persons (including those who are small entities) are not likely to incur

significant burden in responding to consumer requests. Furthermore, the Board has provided an exception to the rule for mortgage owners who do not hold the loan more than 30 days. The Board believes that this exception balances the needs of consumers for information with the burdens on industry of compliance and the potential for confusion to consumers of multiple disclosures.

#### *F. Other Federal Rules*

The Board has not identified other rules that conflict with the rule. As indicated previously, under RESPA and HUD's Regulation X, consumers must be notified when the servicer of their mortgage loan has changed. Therefore, the disclosure of contact information for the agent of the owner of the mortgage loan, typically the servicer under applicable agreements, is already generally required by law. As a result of existing requirements, servicers are already subject to disclosure of their contact information and are already subject to calls regarding administration of payment information.

#### *G. Significant Alternatives to the Interim Final Rule*

As noted above, this interim final rule implements the statutory requirements of the 2009 Act that were effective on May 20, 2009. The Board has implemented these requirements to minimize burden while retaining benefits to consumers. The Board was not required to issue rules but has decided that rules are needed to clarify who is subject to the requirements and what information must be disclosed, and to ensure that consumers receive disclosures of ownership that are consistent with legislative intent. The Board welcomes comment on any significant alternatives that would minimize the impact of the interim final rule on small entities.

The Board welcomes further information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the interim final rule to small businesses.

## **VI. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 appendix A.1), the Board reviewed the interim final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this final rule is found in 12 CFR 226.39. The Board may not conduct or sponsor, and an organization is not required to

respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100-0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are persons or entities that acquire legal title to more than one mortgage loan in any 12-month period, including for-profit financial institutions and small businesses.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance with Regulation Z for 24 months (12 CFR 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other entities supervised by the Board that engage in activities covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the institutions supervised by the Federal Reserve System as: state member banks, 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. Other Federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority under TILA.

The current total annual burden to comply with the provisions of Regulation Z is estimated to be 1,011,311 hours for the 1,138 institutions supervised by the Federal Reserve that are deemed to be respondents for the purposes of the PRA.

As discussed in the preamble, the Board is adopting a new disclosure rule requiring that consumers receive notice when ownership of their mortgage loan is transferred. The new disclosure requirement will impose a one-time increase in the total annual burden under Regulation Z for respondents supervised by the Federal Reserve that engage in mortgage acquisitions. The Board estimates that 68 respondents<sup>4</sup> supervised by the Federal Reserve will take, on average, 40 hours (one business week) to update their systems, internal procedure manuals, and provide training for relevant staff to comply with the new disclosure requirements in § 226.39. Accordingly, this revision is estimated to result in a one-time increase in the aggregate burden by 2,720 hours for these 68 respondents.

On a continuing basis, the Board estimates that 68 respondents supervised by the Federal Reserve would take, on average, 8 hours<sup>5</sup> per month to comply with the new disclosure requirements, which would increase the ongoing aggregate burden by 6,528 hours annually for these respondents. Accordingly, the Board estimates that the new disclosure requirement will increase the total annual burden on a continuing basis for respondents supervised by the Federal Reserve from 1,011,311 to 1,017,839 hours (not including the one-time increase of 2,720 hours to implement the changes, as described above). This total estimated burden increase represents averages for all respondents supervised by the Federal Reserve. The Board expects that the amount of time required to implement each of the changes for a given institution may vary based on the size and complexity of the respondent.

The other federal financial institution supervisory agencies (the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA)) are responsible for estimating and reporting to OMB the

total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15 U.S.C. 1607(a). These agencies may, but are not required to, use the Board's methodology for estimating burden. Using the Board's method, the total current estimated annual burden for the approximately 17,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Board, OCC, OTS, FDIC, and NCUA under TILA would be approximately 17,765,525 hours. The final rule will impose a one-time increase in the estimated annual burden for the estimated 638 institutions thought to engage in mortgage acquisitions by 25,520 hours. On a continuing basis the annual burden would increase by 61,248 hours. The total annual burden is estimated to be 17,852,293 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices.

The Board has a continuing interest in public opinion on its collections of information. At any time, comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for enhancing the quality of information collected and ways for reducing the burden on respondent. Comments on the collection of information may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

#### List of Subjects in 12 CFR Part 226

Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

#### Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

#### PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

**Authority:** 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Public Law 111-24 § 2, 123 Stat. 1734.

#### Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Add a new § 226.39 to Subpart E of Part 226 to read as follows:

##### § 226.39 Mortgage transfer disclosures.

(a) *Scope.* The disclosure requirements of this section apply to any covered person except as otherwise provided in this section. For purposes of this section:

(1) A “covered person” means any person, as defined in § 226.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment, or other transfer, and who acquires more than one mortgage loan in any twelve-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan or it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation.

(2) A “mortgage loan” means any consumer credit transaction that is secured by the principal dwelling of a consumer.

(b) *Disclosure required.* Except as provided in paragraph (c) of this section, any person that becomes a covered person as defined in this section shall mail or deliver the disclosures required by this section to the consumer on or before the 30th calendar day following the acquisition date. If there is more than one covered person, only one disclosure shall be given and the covered persons shall agree among themselves which covered person shall comply with the requirements that this section imposes on any or all of them.

(1) *Acquisition date.* For purposes of this section, the date that the covered person acquired the mortgage loan shall be the date of acquisition recognized in the books and records of the acquiring party.

(2) *Multiple consumers.* If there is more than one consumer liable on the obligation, a covered person may mail or deliver the disclosures to any consumer who is primarily liable.

(c) *Exceptions.* Notwithstanding paragraph (b) of this section, a covered person is not subject to the requirements of this section with respect to a particular mortgage loan if:

(1) The covered person sells or otherwise transfers or assigns legal title to the mortgage loan on or before the 30th calendar day following the date that the covered person acquired the mortgage loan; or

<sup>4</sup> Based on loan purchases reported for 2008 under the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.*, and Regulation C (12 CFR part 203), the Board estimates that 58 of the 553 institutions engaged in such mortgage acquisitions are supervised by the Federal Reserve. Based on average Call Report data for the past four quarters, approximately 95 institutions that do not report under HMDA also would be subject to these new disclosure requirements and 10 of these institutions are supervised by the Federal Reserve.

<sup>5</sup> Because financial institutions are familiar with the existing RESPA provisions which require notification to consumers when the servicer of their mortgage loan has changed, the Federal Reserve believes that implementation of requirements in § 226.39 should not be overly burdensome.

(2) The mortgage loan is transferred to the covered person in connection with a repurchase agreement and the transferor that is obligated to repurchase the loan continues to recognize the loan as an asset on its own books and records. However, if the transferor does not repurchase the mortgage loan, the acquiring party must make the disclosures required by § 226.39 within 30 days after the date that the transaction is recognized as an acquisition in its books and records.

(d) *Content of required disclosures.* The disclosures required by this section shall identify the loan that was acquired or transferred and state the following:

(1) The identity, address, and telephone number of the covered person who owns the mortgage loan. If there is more than one covered person, the information required by this paragraph shall be provided for each of them.

(2) The acquisition date recognized by the covered person.

(3) How to reach an agent or party having authority to act on behalf of the covered person (or persons), which shall identify a person (or persons) authorized to receive legal notices on behalf of the covered person and resolve issues concerning the consumer's payments on the loan. However, no information is required to be provided under this paragraph if the consumer can use the information provided under paragraph (d)(1) of this section for these purposes. If multiple persons are identified under this paragraph, the disclosure shall provide contact information for each and indicate the extent to which the authority of each agent differs. For purposes of this paragraph (d)(3), it is sufficient if the covered person provides only a telephone number provided that the consumer can use the telephone number to obtain the address for the agent or other person identified.

(4) The location where transfer of ownership of the debt to the covered person is recorded. However, if the transfer of ownership has not been recorded in public records at the time the disclosure is provided, the covered person complies with this paragraph by stating this fact.

(e) *Optional disclosures.* In addition to the information required to be disclosed under paragraph (d) of this section, a covered person may, at its option, provide any other information regarding the transaction.

■ 3. In Supplement I to Part 226, under Subpart E, a new *Section 226.39—Mortgage Transfer Disclosures* is added to read as follows:

**Supplement I to Part 226—Official Staff Interpretations**

\* \* \* \* \*

**Subpart E—Special Rules for Certain Home Mortgage Transactions**

\* \* \* \* \*

*Section 226.39—Mortgage transfer disclosures.*

*39(a) Scope.*

*Paragraph 39(a)(1).*

1. *Covered persons.* The disclosure requirements of § 226.39 apply to any “covered person” that becomes the legal owner of an existing mortgage loan, whether through a purchase, assignment, or other transfer, regardless of whether the person also meets the definition of a “creditor” in Regulation Z. The fact that a person purchases or acquires mortgage loans and provides disclosures under § 226.39 does not by itself make that person a “creditor” as defined in the regulation.

2. *Acquisition of legal title.* To become a “covered person” subject to § 226.39, a person must become the owner of an existing mortgage loan by acquiring legal title to the debt obligation. The transfer of ownership of a mortgage loan is subject to the disclosure requirements of this section when the acquiring party is a separate legal entity from the transferor, even if the parties are affiliated entities. Section 226.39 does not apply to persons who acquire only a beneficial interest in the loan or a security interest in the loan. Section 226.39 also does not apply to a party that assumes the credit risk without acquiring legal title to the loan. Thus, an investor that acquires mortgage-backed securities, pass-through certificates, or participation interests and does not directly acquire legal title in the underlying mortgage loans is not covered by this section.

3. *Loan servicers.* Pursuant to TILA Section 131(f)(2), the servicer of a mortgage loan is not treated as the owner of the obligation for purposes of § 226.39 if the servicer holds title to the loan as a result of the assignment of the obligation to the servicer solely for the administrative convenience of the servicer in servicing the obligation.

4. *Mergers, corporate acquisitions, or reorganizations.* Disclosures are required under § 226.39 when, as a result of a merger, corporate acquisition, or reorganization the ownership of a mortgage loan is transferred to a different legal entity.

*Paragraph 39(a)(2).*

1. *Mortgage transactions covered.* Section 226.39 applies to any consumer credit transaction secured by the principal dwelling of a consumer, which includes closed-end mortgage loans as well as home equity lines of credit.

*39(b) Disclosure required.*

1. *Generally.* A covered person must mail or deliver the disclosures required by § 226.39 on or before the 30th calendar day following the date that the covered person acquired the loan, unless the exception in § 226.39(c) applies. For example, if a covered person acquires a mortgage loan on March 1, the required disclosure must be mailed or

delivered on or before March 31. For purposes of this requirement, the date that the covered person acquires the loan is the acquisition date recognized in its books and records.

2. *Disclosure provided on behalf of multiple entities.* A mortgage loan may be acquired by a covered person and subsequently transferred to an affiliate or other entity that is also a covered person required to provide disclosures under § 226.39. In such cases, a single disclosure may be provided on behalf of both entities instead of providing two separate disclosures, as long as the disclosure satisfies the timing and content requirements applicable to both entities. For example, if a covered person acquires a loan on August 31 with the knowledge that it will assign the loan to another entity on October 15, the covered person could mail a single disclosure on or before September 30 which provides the required information for both entities and indicates when the subsequent transfer is expected to occur. Even though one person delegates responsibility for the disclosures to another covered person, each has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner.

*39(c) Exceptions.*

*Paragraph 39(c)(1).*

1. *Example.* If a mortgage loan is originated on February 22nd and the original creditor sells the loan on March 1 to a covered person, under the exception in § 226.39(c) the covered person would not be required to provide disclosures under § 226.39 if the loan is sold or otherwise transferred or assigned to another party on or before March 31.

*Paragraph 39(c)(2).*

1. *Repurchase agreements.* The original creditor or owner of the mortgage loan might sell or transfer legal title to the loan to secure short-term business financing under an agreement where the original creditor or owner is also obligated to repurchase the loan within a brief period, typically a month or less. If the original creditor or owner does not recognize such transactions as a sale of the loan on its own books and records for accounting purposes, the transfer of the loan in connection with such a repurchase agreement is not covered by § 226.39 and the acquiring party is not required to provide disclosures. However, if the transferor does not repurchase the mortgage loan, the acquiring party must make the disclosures required by § 226.39 within 30 days after the date that the transaction is recognized as an acquisition in its books and records.

*39(d) Content of required disclosures.*

1. *Identifying the loan.* The disclosures required by this section should identify the loan that was acquired or transferred. The covered person has flexibility in determining what information to provide for this purpose. For example, the covered person may identify the loan by stating the address of the mortgaged property along with the account number or other identification number previously known to the consumer, which may appear in a truncated format. Alternatively, the covered person might identify the loan by specifying the date on which the credit was extended and the original amount of the loan or credit line.

*Paragraph 39(d)(1).*

1. *Identification of covered person.* Section 226.39(d)(1) requires acquiring parties to provide their name, address, and telephone number. The party identified must be the covered person who owns the mortgage loan, regardless of whether another party has been appointed to service the loan or otherwise serve as the covered person's agent. In addition to providing a postal address and a telephone number, the covered person may, at its option, provide an address for receiving electronic mail or an internet web site address but is not required to do so.

*Paragraph 39(d)(3).*

1. *Identifying agents.* Under § 226.39(d)(3), the covered person must provide contact information for the agent or other party having authority to act on behalf of the covered person and who is authorized to receive legal notices on behalf of the covered person and resolve issues concerning the consumer's payments on the loan. Section 226.39(d)(3) does not require that a covered person designate an agent or other party, but if the consumer cannot use the covered person's contact information for these purposes the disclosure must provide contact information for an agent or other party that can address these matters. If multiple agents are listed on the disclosure, the disclosure shall state the extent to which the authority of each agent differs by indicating if only one of the agents is authorized to receive legal notices, or only one of the agents is authorized to resolve issues concerning payments. For purposes of § 226.39(d)(3), it is sufficient to provide a telephone number as the contact information provided that consumers can use the telephone number to obtain the mailing address for the agent or other person identified.

2. *Other contact information.* The covered person may also provide an agent's electronic mail address or internet web site address but is not required to do so.

*Paragraph 39(d)(4).*

1. *Recording location.* Section 226.39(d)(4) requires disclosure of the location where transfer of ownership of the debt to the covered person is recorded. If the transfer of ownership has not been recorded in public records at the time the disclosure is provided, the covered person complies with § 226.39(d)(4) by stating this fact. Whether or not the transfer has been recorded at the time the disclosure is made, the disclosure may state that the transfer "is or may be recorded" at the specified location.

2. *Postal address not required.* In disclosing the location where the transfer of ownership is recorded, the covered person is not required to provide a postal address for the governmental office where the covered person's ownership interest is recorded. The covered person also is not required to provide the name of the county or jurisdiction where the property is located. For example, it would be sufficient to disclose that the transaction is or may be recorded in the office of public land records or the recorder of deeds office "for the county or local jurisdiction where the property is located."

*39(e) Optional disclosures.*

1. *Generally.* Section 226.39(e) provides that covered persons may, at their option,

include additional information about the mortgage transaction that they consider relevant or helpful to consumers. For example, the covered person may choose to inform consumers that the location where they should send mortgage payments has not changed.

By order of the Board of Governors of the Federal Reserve System, November 13, 2009.

**Jennifer J. Johnson,**

*Secretary of the Board.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 358

[Docket No. RM07-1-002; Order No. 717-B]

#### Standards of Conduct for Transmission Providers; Order on Rehearing and Clarification

Issued November 16, 2009.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order on rehearing and clarification.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) issued Order No. 717-A to make even clearer the Standards of Conduct as implemented by Order No. 717. This order addresses requests for rehearing and clarification concerning paragraph 80 of Order No. 717-A and whether an employee who is not making business decisions about contract non-price terms and conditions is considered a "marketing function employee."

**DATES:** *Effective Date:* This rule will become effective November 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Leonard Tao, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8214.

#### SUPPLEMENTARY INFORMATION:

129 FERC ¶ 61,123

Before Commissioners: Jon Wellinoff, Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

#### I. Introduction

1. On October 16, 2008, the Commission issued Order No. 717 amending the Standards of Conduct for Transmission Providers (the Standards of Conduct or the Standards) to make them clearer and to refocus the rules on the areas where there is the greatest

potential for abuse.<sup>1</sup> On October 15, 2009, the Commission issued Order No. 717-A to address requests for rehearing and clarification of Order No. 717, largely affirming the reforms adopted in Order No. 717.<sup>2</sup> In this order, the Commission grants limited rehearing and clarification to address certain specific matters petitioners raised regarding one of the Commission's determinations in Order No. 717-A.

#### II. Discussion

##### *Independent Functioning Rule: Marketing Function Employees*

2. In paragraph 80 of Order No. 717-A, the Commission stated the following:

The Commission clarifies that an employee in the legal, finance or regulatory division of a jurisdictional entity, whose intermittent day-to-day duties include the drafting and redrafting of non-price terms and conditions of, or exemptions to, umbrella agreements is a "marketing function employee." "Marketing functions" are not limited to only price terms and conditions of a contract, because non-price terms and conditions of a contract could contain information that an affiliate could use to its advantage. For example, delivery or hub locations in a contract are non-price terms that could be used to favor an affiliate. In addition, negotiated terms and conditions could affect the substantive rights of the parties. For this reason, we decline to make a generic finding to limit "marketing functions" to only price terms and conditions, but will consider waiver requests concerning an employee whose intermittent duties involve drafting non-price terms and conditions.<sup>3</sup>

##### *Requests for Rehearing and Clarification*

3. Several parties have requested expedited clarification regarding paragraph 80 of Order No. 717-A.<sup>4</sup> Specifically, EEI and Western Utilities request that the Commission clarify that legal, finance, and regulatory personnel can be shared between an entity's transmission and marketing function units.<sup>5</sup> Similarly, Otter Tail and Central Vermont seek clarification that lawyers, finance, and regulatory personnel may continue to provide support to

<sup>1</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, 73 FR 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008) ("Order No. 717").

<sup>2</sup> *Standards of Conduct for Transmission Providers*, Order No. 717-A, 74 FR 54463 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 31,297 (2009) ("Order No. 717-A").

<sup>3</sup> Order No. 717-A at P 80.

<sup>4</sup> Edison Electric Institute (EEI) Oct. 30, 2009 Request for Clarification at 7; The Western Utilities Compliance Group (Western Utilities) Nov. 2, 2009 Request for Clarification at 6; Otter Tail Power Company (Otter Tail) Nov. 10, 2009 Request for Clarification at 1; Central Vermont Public Service Corporation (Central Vermont) Nov. 12, 2009 Request for Clarification at 1.

<sup>5</sup> EEI at 7; Western Utilities at 6.