



This document is scheduled to be published in the Federal Register on 08/27/2014 and available online at <http://federalregister.gov/a/2014-20279>, and on FDsys.gov

FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Docket No. R-1490]

RIN 7100 AE-19

Unfair or Deceptive Acts or Practices (Regulation AA)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing to repeal its Regulation AA, which was issued pursuant to its rule writing authority under section 18(f)(1) of the Federal Trade Commission Act (FTC Act or Act). Section 1092(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) repealed section 18(f)(1) of the FTC Act, thus eliminating the Board's rule writing authority under the Act.

DATES: Comments must be received on or before **[Insert date 60 days after publication in the Federal Register]**.

ADDRESSES: You may submit comments, identified by Docket No. R-1490 and RIN 7100 AE-19, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.

- Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, D.C. 20551.

All public comments are available from the Board's web site at

<http://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Mandie K. Aubrey, Counsel, Division of Consumer and Community Affairs, at (202) 452-3667, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The FTC Act directs the Federal Trade Commission (FTC) to promulgate rules to define and prevent unfair or deceptive acts or practices for persons other than banks, savings and loans, and Federal credit unions.¹ Pursuant to the Act, in 1984 the FTC issued its Credit Practices Rule, which applied to persons within the FTC's jurisdiction.²

¹ 15 U.S.C. 45 and 57a(a)(1).

² 16 CFR 444.1-.5.

Prior to Dodd-Frank Act amendments to the FTC Act in 2010, section 18(f)(1) of the Act required the Board to promulgate rules applicable to banks that were “substantially similar” to these FTC rules, with some exceptions.³ In addition, section 18(f)(1) of the Act provided the Board the authority to prescribe additional rules for banks addressing unfair or deceptive acts or practices – regardless of whether the FTC had promulgated rules about such acts or practices. The Act also required the Board to take appropriate action on complaints about unfair or deceptive acts or practices by banks.⁴

Pursuant to its rule writing authority in section 18(f)(1) of the FTC Act, the Board issued Regulation AA,⁵ including the Board’s credit practices rule, which was adopted in 1985.⁶ The Board’s credit practices rule was substantially similar to the FTC’s Credit Practices Rule; in adopting the rule, the Board relied on the extensive findings that had been made by the FTC that the prohibited practices were unfair or deceptive.

The Board’s credit practices rule in Regulation AA prohibits banks from using certain remedies to enforce consumer credit obligations and from including these remedies in their consumer credit contracts. Specifically, the rule prohibits the following contract provisions and remedies:

³ Section 18(f)(1) of the Act was previously codified at 15 U.S.C. 57a(f)(1). The Board was not required to impose substantially similar rules if it found that: (1) such acts or practices of banks were not unfair or deceptive, or (2) implementation of similar regulations with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board.

⁴ The same authority that was conferred to the Board by section 18(f)(1) of the Act also applied to the Federal Home Loan Bank Board (FHLBB) (predecessor to the Office of Thrift Supervision), with respect to savings associations, and to the National Credit Union Administration (NCUA), with respect to Federal credit unions.

⁵ 12 CFR Part 227.

⁶ 12 CFR Part 227, subpart B.

- (1) Confession of judgment clauses that require consumers to agree in advance to waive their right to a hearing;
- (2) Waivers of state statutory exemptions that protect debtors' homes and personal necessities from attachment to satisfy a debt, unless they were pledged as collateral for the loan;
- (3) Clauses that assign consumers' future wages to the creditor in the event of default; and
- (4) Provisions granting the creditor a security interest in household goods not in the creditor's possession, unless the goods were purchased with the credit.

The rule also prohibits banks from:

- (1) Obligating a co-signer on the debt unless the co-signer previously received a clear and conspicuous written notice explaining the nature of the co-signer's obligations and liabilities under the contract; and
- (2) Imposing a late fee when a consumer makes a full loan payment on time or within the grace period, solely because the consumer did not pay a previous late fee imposed on an earlier installment (the "pyramiding" of late fees).

In addition, Regulation AA contains a provision that informs consumers how to file a complaint regarding a state member bank and explains the Board's procedure for responding to such complaints.⁷ The provision lists an address to which consumers may send their complaint, and explains that consumers will receive, within 15 business days, either a substantive response or an acknowledgment setting a reasonable time for a substantive response.

⁷ 12 CFR 227.2.

Finally, Regulation AA contains information regarding state exemptions from the rule.⁸ The Board also published, separately from the regulation, Staff Guidelines to clarify how Regulation AA applied in particular circumstances.⁹

The Dodd-Frank Act¹⁰ repealed section 18(f)(1) of the FTC Act.¹¹ Accordingly, the Board is proposing to repeal its Regulation AA.

II. Discussion

Unlike other consumer protection laws and regulations, Regulation AA did not transfer from the Board to the Consumer Financial Protection Bureau (Bureau) under the Dodd-Frank Act. Specifically, the Dodd-Frank Act transferred rule writing authority only for “Federal consumer financial laws,” but did not include the FTC Act in the definition of “Federal consumer financial law.”¹² Therefore, Regulation AA was excluded from the authority that transferred from the Board to the Bureau. As a result, neither the Board nor the Bureau has authority to promulgate rules pursuant to the FTC Act. The Bureau, however, was given separate authority under the Dodd-Frank Act to promulgate rules to identify unfair, deceptive, or abusive acts or practices.¹³

⁸ 12 CFR 227.16.

⁹ <http://www.federalreserve.gov/regulations/cg/crdtpracrul.htm>.

¹⁰ Pub. L. No. 111-203, 124 Stat. 1376 (Jul. 21, 2010).

¹¹ *See* section 1092(2) of the Dodd-Frank Act. The repeal of section 18(f)(1) of the FTC Act also repealed the authorities of the former FHLBB and the NCUA. *See supra* note 4. Section 1092(2) of the Dodd-Frank Act did not repeal FTC Act rule writing authority for the FTC, so the FTC Credit Practices Rule remains in effect. *See supra* note 2.

¹² *See* Dodd-Frank Act sections 1061(a)(1), (b)(1) (transferring authority of “Federal consumer financial laws” to the Bureau) and section 1002(14) (defining “Federal consumer financial laws”).

¹³ Section 1031 of the Dodd-Frank Act.

Notwithstanding the repeal of rule writing authority under the FTC Act, the Board continues to have supervisory and enforcement authority regarding unfair or deceptive acts or practices under section 5 of the FTC Act and sections 1031 and 1036 of the Dodd-Frank Act.¹⁴ Concurrent with this proposed repeal of Regulation AA, the Board, Bureau, Federal Deposit Insurance Corporation, NCUA, and Office of the Comptroller of the Currency are issuing interagency guidance clarifying their view that the unfair or deceptive practices described in the former credit practices rules, including those in Subpart B of Regulation AA, could violate the statutory prohibition against unfair or deceptive practices, even in the absence of a specific regulation governing the conduct.¹⁵ The Board is making copies of the former credit practices rules and the former Staff Guidelines available for reference along with the interagency guidance.

The repeal of Regulation AA would eliminate Subpart A of the regulation, which generally describes the internal procedures used by the Board in handling consumer complaints. Information about how the Board processes consumer complaints is currently provided on the Board's public website where it will continue to be available.¹⁶ The consumer complaints information on the Board's public website can be updated easily and is readily accessible to consumers. Because consumers are not likely to

¹⁴ See 15 U.S.C. 45 (section 5 of the FTC Act). The Board has authority under section 8 of the Federal Deposit Insurance Act to take appropriate action when a bank under its supervision engages in unfair or deceptive acts or practices that violate section 5 of the FTC Act. See 12 U.S.C. 1818(b)(1), (e)(1), and (i)(2) and "Unfair or Deceptive Acts or Practices by State-Chartered Banks" (Mar. 11, 2004) <http://www.federalreserve.gov/boarddocs/press/bcreg/2004/20040311/attachment.pdf>. See also 12 U.S.C. 5531, 5536 (sections 1031 and 1036 of the Dodd-Frank Act).

¹⁵ "Interagency Guidance Regarding Unfair or Deceptive Credit Practices" (August 22, 2014), <http://www.federalreserve.gov/>.

¹⁶ <https://www.federalreserveconsumerhelp.gov/>

benefit from also having these internal processing procedures included in the Code of Federal Regulations, the Board is also proposing to repeal these provisions in Subpart A of Regulation AA.

III. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act¹⁷ (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities. Based on its analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* Regulation AA was issued pursuant to section 18(f)(1) of the FTC Act. As noted above, the Dodd-Frank Act repealed this provision of the FTC Act.¹⁸ Accordingly, the Board is proposing to repeal its Regulation AA.

2. *Small entities affected by the proposed rule.* The proposed rule would repeal Regulation AA, which was issued pursuant to section 18(f)(1) of the FTC Act. As a result of the FTC Act amendments made by the Dodd-Frank Act, the Board no longer has rule writing authority under section 18(f)(1). The legislative repeal of the Board's rulemaking authority nullified the provisions in Regulation AA that were issued pursuant to that authority. Consequently, the proposed repeal of the regulation would not affect any entity, including any small entity.

¹⁷ 5 U.S.C. 601 et seq.

¹⁸ See section 1092(2) of the Dodd-Frank Act.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would repeal Regulation AA and would therefore not impose any recordkeeping, reporting, or compliance requirements on any entities.

4. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed repeal of Regulation AA.

5. *Significant alternatives to the proposed revisions.* Because the repeal of Regulation AA will have no impact, there are no alternatives that would further minimize the economic impact of the proposed rule on small entities.

IV. 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 rule under the authority delegated to the Federal Reserve by the Office of Management and Budget (OMB). The proposed rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 227

Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation AA, 12 CFR part 227, and the Official Staff Commentary, as set forth below:

PART 227—[Removed and Reserved]

1. Part 227 is removed and reserved.

By order of the Board of Governors of the Federal Reserve System, May 28, 2014.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2014-20279 Filed 08/26/2014 at 8:45 am; Publication Date: 08/27/2014]