

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

8 CFR Parts 3 and 240

[AG Order No. 2345-2000]

RIN 1125-AA27; EOIR No. 125P

Authorities Delegated to the Director of the Executive Office for Immigration Review, the Chairman of the Board of Immigration Appeals, and the Chief Immigration Judge

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would outline the authorities and powers delegated by the Attorney General to the Director of the Executive Office for Immigration Review, the Chairman of the Board of Immigration Appeals, and the Chief Immigration Judge. Members of the Board of Immigration Appeals would be designated as Appellate Immigration Judges.

DATES: Written comments must be submitted on or before February 26, 2001.

ADDRESSES: Please submit written comments to Charles K. Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305-0470.

FOR FURTHER INFORMATION CONTACT: Charles K. Adkins-Blanch, (703) 305-0470.

SUPPLEMENTARY INFORMATION: In a January 1983 Departmental reorganization, the Attorney General created the Executive Office for Immigration Review (EOIR). This reorganization consolidated the Department's immigration review programs by placing the Immigration Judges (formerly special inquiry officers within the Immigration and Naturalization Service (INS)) with the Board of Immigration Appeals (BIA) in a newly-created organization, the EOIR. The Office of the Chief Administrative

Hearing Officer (OCAHO) was also added to EOIR, placing similar quasi-judicial functions within a single Departmental organization.

This proposed rule concerns the authorities of EOIR's Director, the Chief Immigration Judge, and the Chairman of the BIA, and the limitations on those authorities. The rule will assist EOIR in implementing consolidated management directives to handle more effectively and efficiently its immigration caseload, which has increased dramatically since 1983. The rule also will assist the public and those individuals who come before EOIR adjudicators in understanding how the Attorney General's authority is delegated to EOIR and among its management officials. The language of the proposed rule is intended to reflect the dynamic immigration arena in which EOIR employees work together, and with other components and agencies, to serve the public, implement statutes and regulations, and comply with Departmental directives and programs (e.g., Comprehensive Asylum Reform Initiative, Expedited Deportation of Criminal Aliens Initiative).

The proposed rule contains amendments to 8 CFR 3.0 that would enumerate both the powers of the Director and limitations on his authority. These amendments highlight the Director's role as EOIR's manager and, as such, his responsibility for the uniform implementation of applicable statutes and regulations, including his authority to issue operational instructions and policies to all EOIR components to promote and advance the components' missions.

The Director is tasked with ensuring the efficient disposition of all pending cases. The Director is given the power, in his discretion, to set priorities or time frames for the resolution of cases, to regulate the assignment of adjudicators to cases, and otherwise to manage the docket of matters to be decided by the BIA, the Immigration Judges, the Chief Administrative Hearing Officer, or the Administrative Law Judges (ALJs). The Director does not have the authority, however, to direct the result of an adjudication assigned to the BIA, an Immigration Judge, the Chief Administrative Hearing Officer, or an ALJ.

The Director is also responsible for coordinating with other Departmental components, such as the INS, and with federal agencies, such as the State Department. He has the authority to evaluate the performance of EOIR's components, and to take corrective action where necessary. In addition to these powers, which allow the Director to manage uniformly the operations of the components, the Director exercises any other authority delegated to him by the Attorney General.

In addition to enumerating the powers of the Director, the amendments to 8 CFR 3.0 would include information on the role of EOIR's Deputy Director and its General Counsel, and on the citizenship requirement for employment at EOIR.

The proposed rule contains amendments to 8 CFR 3.1 that would add specific information on the organization of the BIA, the powers delegated to its Chairman, and the purpose of this quasi-judicial appellate body. The majority of the administrative decisions reviewed on appeal by the BIA are adjudications made by Immigration Judges. Therefore, to underscore the Board Members' role as appellate reviewers of Immigration Judges' decisions, and to treat EOIR adjudicators uniformly, the members of the BIA would be called Appellate Immigration Judges.

The powers delegated to the Chairman of the BIA would be enumerated. The list is similar to that of the authorities vested in the EOIR's Director, but confined to the BIA. The amendments also would set forth the purpose of the BIA—to review administrative decisions issued by the INS and the Immigration Judges, as assigned by the Attorney General—and would indicate that the BIA shall resolve questions before it in a timely and impartial manner, consistent with the Immigration and Nationality Act (Act) and regulations. The BIA is tasked with providing clear and uniform guidance on the proper interpretation and administration of the Act and regulations to the INS, the Immigration Judges, and the general public through precedent decisions. The BIA's independent judgment and discretion would be recognized. Information on BIA panels and the designation of temporary BIA members would also be included.

The proposed rule would change the title of subpart B of part 3 from "Immigration Court" to the "Office of the Chief Immigration Judge" (OCIJ) to accurately reflect the structure of the agency, with the OCIJ as the component head of the Immigration Courts. The rule also would make the titles of the subparts in title 8 regarding EOIR's components consistent with the titles of such subparts in Title 28. The rule would define the term "Immigration Court" as local sites of the OCIJ where proceedings are held before Immigration Judges and records of proceedings are created.

The proposed rule also contains amendments to 8 CFR 3.9 that would add specific information on the organization of the OCIJ, the powers delegated to the Chief Immigration Judge, the Immigration Courts, and the powers and duties of Immigration Judges. As in the case of the Chairman of the BIA, the powers delegated to the Chief Immigration Judge would be enumerated. The list is similar to that of the authorities vested in EOIR's Director, but confined to the OCIJ. The Chief Immigration Judge is responsible for the supervision, direction, and scheduling of the Immigration Judges in the conduct of the hearings and other duties assigned to them. The Chief Immigration Judge also issues operational instructions and policy, including procedural guidance on the implementation of new statutory or regulatory authority. Immigration Judges would continue to exercise their independent judgment and discretion, and take any action consistent with the Act and regulations that is appropriate and necessary for the disposition of the cases before them.

Finally, the proposed rule would delete two sentences from section 240.1 of title 8 to make that section consistent with the proposed redesignations and revisions to part 3 of that title.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this proposed rule and, by approving it, certifies that it will affect only Departmental employees, individuals in immigration proceedings before the EOIR, and practitioners who appear before EOIR. Therefore, this proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or

by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This proposed rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, it has not been submitted to OMB for review.

Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles K. Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305-0470.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

8 CFR Part 240

Administrative practice and procedure, Aliens.

Accordingly, for the reasons set forth in the preamble, parts 3 and 240 of chapter I of title 8 of the Code of Federal Regulations are proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for 8 CFR part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949-1953 Comp., p. 1002.

2. Revise § 3.0 to read as follows:

§ 3.0 Executive Office for Immigration Review.

(a) Organization. Within the Department of Justice, there shall be an Executive Office for Immigration Review (EOIR), headed by a Director who is appointed by the Attorney General. The Director shall be assisted by a Deputy Director and by a General Counsel. EOIR shall include the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, and such other staff as the Attorney General or Director may provide.

(b) Powers of the Director. (1) The Director shall manage EOIR and its employees and shall be responsible for the direction and supervision of the Board, the Office of the Chief Immigration Judge, and the Office of the Chief Administrative Hearing Officer in the execution of their respective duties pursuant to the Act and the provisions of this chapter. Unless otherwise provided by the Attorney General, the Director shall report to the Deputy Attorney General and the Attorney General. The Director shall have the authority to:

(i) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(ii) Direct the conduct of all EOIR employees to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the

resolution of cases; to direct that the adjudication of certain cases be deferred; to regulate the assignment of adjudicators to cases; and otherwise to manage the docket of matters to be decided by the Board, the Immigration Judges, the Chief Administrative Hearing Officer, or the Administrative Law Judges;

(iii) Provide for appropriate administrative coordination with the other components of the Department of Justice, including the Immigration and Naturalization Service, and with the Department of State;

(iv) Evaluate the performance of the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, and other EOIR activities, making appropriate reports and inspections, and take corrective action where needed; and

(v) Exercise such other authorities as the Attorney General may provide.

(2) The Director may delegate the authority given to him by this part or by the Attorney General to the Deputy Director, the General Counsel, the Chairman of the Board of Immigration Appeals, the Chief Immigration Judge, the Chief Administrative Hearing Officer, or any other EOIR employee.

(c) *Limit on the Authority of the Director.* The Director shall have no authority to adjudicate cases arising under the Act or regulations and shall not direct the result of an adjudication assigned to the Board, an Immigration Judge, the Chief Administrative Hearing Officer, or an Administrative Law Judge; provided, however, that nothing in this part shall be construed to limit the authority of the Director under paragraph (b) of this section.

(d) *Deputy Director.* The Deputy Director shall advise and assist the Director in the management of EOIR and the formulation of policy and guidelines. Unless otherwise limited by law or by order of the Director, the Deputy Director shall exercise the full authority of the Director in the discharge of his or her duties.

(e) *General Counsel.* Subject to the supervision of the Director, the General Counsel shall serve as the chief legal counsel of EOIR. The General Counsel shall provide legal advice and assistance to the Director, Deputy Director, and heads of the components within EOIR, and shall supervise all legal activities of EOIR not related to adjudications arising under the Act or this chapter.

(f) *Citizenship Requirement for Employment.* (1) An application to work at EOIR, either as an employee or a volunteer, must include a signed affirmation from the applicant that he or

she is a citizen of the United States of America. If requested, the applicant must document United States citizenship.

(2) The Director of EOIR may, by explicit written determination and to the extent permitted by law, authorize the appointment of an alien to an EOIR position when necessary to accomplish the work of EOIR.

3. Amend § 3.1 by:

a. Revising the heading;

b. Revising paragraphs (a)(1), (2), and (3);

c. Redesignating paragraphs (a)(4), (5), and (6) as paragraphs (a)(8), (9), and (10), respectively and revising newly designated paragraph (a)(10);

d. Adding new paragraphs (a)(4), (a)(5), (a)(6), and (a)(11);

e. Removing paragraph (d)(1); and

f. Redesignating paragraphs (d)(2), (3), and (4) as (d)(1), (2), and (3), respectively, to read as follows:

Subpart A—Board of Immigration Appeals

§ 3.1 Organization and powers of the Board of Immigration Appeals.

(a)(1) *In general.* Within the Executive Office for Immigration Review (EOIR), there shall be a Board of Immigration Appeals consisting of a Chairman, two Vice Chairmen, and 18 other Board Members. The Board shall be subject to the supervision of the Director of EOIR and shall function as an appellate body charged with the review of those administrative adjudications under the Act that the Attorney General may by regulation assign it. The Board Members shall be attorneys appointed by the Attorney General to act as the Attorney General's delegates in the cases that come before them. The Board Members shall be known as Appellate Immigration Judges. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of the remaining members to exercise the powers of the Board.

(2) *Position and Powers of the Chairman and Vice Chairmen—*(i) The Attorney General shall appoint a Chairman who, subject to the supervision of the Director, shall manage the Board. The Attorney General shall also appoint two Vice Chairmen to assist the Chairman. The Vice Chairmen may exercise all of the powers and duties of the Chairman in the Chairman's absence or unavailability. The Chairman shall have the authority to:

(A) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(B) Provide for appropriate training of Board members and staff on the conduct of their powers and duties;

(C) Direct the conduct of all employees assigned to the Board to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases; to direct that the adjudication of certain cases be deferred; to regulate the assignment of Board Members to cases; and otherwise to manage the docket of matters to be decided by the Board;

(D) Evaluate the performance of the Board by making appropriate reports and inspections, and take corrective action where needed;

(E) Adjudicate cases as a Board Member; and

(F) Exercise such other authorities as the Director may provide.

(ii) *Limit on the Authority of the Chairman.* The Chairman shall have no authority to direct the result of an adjudication assigned to another Board Member or panel of members; provided, however, that nothing in this part shall be construed to limit the authority of the Chairman under paragraph (a)(2)(i) of this section.

(3) *Purpose.* The Board shall review administrative decisions assigned to it by the Attorney General through regulation. In reviewing those cases, the Board shall seek to resolve the questions before it in a manner that is timely, impartial, and consistent with the Act and regulations. In addition, the Board, through precedent decisions, shall provide clear and uniform guidance to the Service, the Immigration Judges, and the general public on the proper interpretation and administration of the Act and regulations. In deciding the individual cases before them, Board Members shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases.

(4) *Panels.* The Chairman may divide the Board into three-member panels and designate a Presiding Member of each panel. The Chairman may from time to time make changes in the composition of such panels and of Presiding Members. A three-member panel may include one Temporary Board Member designated by the Director pursuant to paragraph (a)(6) of this section. Each panel shall review and decide cases by majority vote. Each panel may exercise the appropriate authority of the Board that is necessary for the adjudication of cases before it. In the case of an opposed motion or a motion to

withdraw an appeal pending before the Board, a single Board Member may exercise the appropriate authority of the Board that is necessary for the adjudication of such motions. In addition, a single Board Member may exercise the same authority in disposing of the following matters:

(i) A Service motion to remand an appeal from the denial of a visa petition where the Regional Service Center Director requests that the matter be remanded to the Service for further consideration of the appellant's arguments or evidence raised on appeal;

(ii) A case where remand is required because of a defective or missing transcript; and other procedural or ministerial adjudications as provided by the Chairman.

(5) Motions to reconsider or to reopen. A motion to reconsider or reopen a decision that was rendered by a single Board Member may be adjudicated by that Member.

(6) *Designation of Temporary Board Members.* In his discretion, the Director may from time to time designate other individuals to serve as Temporary Board Members as follows:

(i) The Director may designate Immigration Judges, retired Board Members, retired Immigration Judges, and Administrative Law Judges employed within EOIR to act as temporary, additional members of the Board for terms not to exceed six months.

(ii) Whenever Temporary Board Members are designated to serve, their participation in a case shall continue to its normal conclusion, provided that Temporary Board Members shall have no role in the actions of the Board en banc.

* * * * *

(10) *Board Staff.* The Board may be assisted in its work by attorneys and other personnel as the Director provides.

(11) *Governing Standards.* The authorities of the Board are those provided in this chapter. The Board shall be governed by the provisions and limitations prescribed by the Act and this chapter, by the precedent decisions of the Board, and by decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act).

* * * * *

4. Revise the heading to Subpart B to read as follows:

Subpart B—Office of the Chief Immigration Judge

5. Revise § 3.9 to read as follows:

§ 3.9 Office of the Chief Immigration Judge.

(a) *Organization.* Within the Executive Office for Immigration Review, there shall be an Office of the Chief Immigration Judge (OCIJ), consisting of the Chief Immigration Judge, the Immigration Judges, and such other staff as the Director deems necessary. The Attorney General shall appoint the Chief Immigration Judge and such Deputy Chief Immigration Judges and Assistant Chief Immigration Judges as may be necessary to assist the Chief Immigration Judge.

(b) *Powers of the Chief Immigration Judge.* Subject to the supervision of the Director, the Chief Immigration Judge shall be responsible for the supervision, direction, and scheduling of the Immigration Judges in the conduct of the hearings and duties assigned to them. The Chief Immigration Judge shall have the authority to:

(1) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(2) Provide for appropriate training of the Immigration Judges and other OCIJ staff on the conduct of their powers and duties;

(3) Direct the conduct of all employees assigned to OCIJ to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases, to direct that the adjudication of certain cases be deferred, to regulate the assignment of Immigration Judges to cases, and otherwise to manage the docket of matters to be decided by the Immigration Judges;

(4) Evaluate the performance of the Immigration Courts and other OCIJ activities by making appropriate reports and inspections, and take corrective action where needed;

(5) Adjudicate cases as an Immigration Judge; and

(6) Exercise such other authorities as the Director may provide.

(c) *Limit on the Authority of the Chief Immigration Judge.* The Chief Immigration Judge shall have no authority to direct the result of an adjudication assigned to another Immigration Judge, provided, however, that nothing in this part shall be construed to limit the authority of the Chief Immigration Judge in paragraph (b) of this section.

(d) *Immigration Court.* The term Immigration Court shall refer to the local sites of the OCIJ where proceedings are held before Immigration

Judges and where the records of those proceedings are created and maintained.

6. Revise § 3.10 to read as follows:

§ 3.10 Immigration Judges.

(a) *Appointment.* Immigration Judges shall be attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration Judges shall act as the Attorney General's delegates in the cases that come before them.

(b) *Powers and duties.* In conducting hearings under section 240 of the Act and such other proceedings the Attorney General may assign to them, Immigration Judges shall exercise the powers and duties delegated to them by the Act and by the Attorney General through regulation. In deciding the individual cases before them, Immigration Judges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases. Immigration Judges shall administer oaths, receive evidence, and interrogate, examine, and cross-examine aliens and any witnesses. Subject to §§ 3.35 and 287.4 of this chapter, they may issue administrative subpoenas for the attendance of witnesses and the presentation of evidence. In all cases, Immigration Judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations.

(c) *Review.* Decisions of Immigration Judges are subject to review by the Board of Immigration Appeals in any case in which the Board has jurisdiction as provided in subpart A of this part.

(d) *Governing standards.* Immigration Judges shall be governed by the provisions and limitations prescribed by the Act and this chapter, by the decisions of the Board, and by the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act).

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

7. The authority citation for 8 CFR part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

Subpart A—Removal Proceedings

8. Amend § 240.1 by removing the first and second sentences of paragraph (a)(2).

Dated: December 10, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00-32216 Filed 12-22-00; 8:45 am]

BILLING CODE 4410-30-P

FEDERAL RESERVE SYSTEM**12 CFR Part 226**

[Regulation Z; Docket No. R-1090]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing amendments to the provisions of Regulation Z (Truth in Lending) that implement the Home Ownership and Equity Protection Act (HOEPA). HOEPA was enacted in 1994, in response to evidence of abusive lending practices in the home-equity lending market. HOEPA imposes additional disclosure requirements and substantive limitations (for example, restricting short-term balloon notes) on home-equity loans bearing rates or fees above a certain percentage or amount. The amendments would broaden the scope of mortgage loans subject to HOEPA by adjusting the price triggers used to determine coverage under the act. The rate-based trigger would be lowered by two percentage points and the fee-based trigger would be revised to include optional insurance premiums and similar credit protection products paid at closing. Certain acts and practices in connection with home-secured loans would be prohibited, including rules to restrict creditors from engaging in repeated refinancings of their own HOEPA loans over a short time period when the transactions are not in the borrower's interest. HOEPA's prohibition against extending credit without regard to consumers' repayment ability would be strengthened. Disclosures received by consumers before closing for HOEPA-covered loans would be enhanced.

DATES: Comments must be received on or before March 9, 2001.

ADDRESSES: Comments, which should refer to Docket No. R-1090, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington,

DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP-500 in the Board's Martin Building between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT:

Kyung Cho-Miller, Counsel, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452-3667 or 452-2412; for the hearing impaired only, contact Janice Simms, Telecommunication Device for the Deaf, (202) 872-4984.

SUPPLEMENTARY INFORMATION:**I. Background**

Much attention has been focused on "predatory lending practices" in connection with mortgage loans. The term encompasses a variety of practices. Homeowners in certain communities oftentimes are targeted with offers of high-cost credit, particularly the elderly, minorities, and women. In the case of elderly homeowners, they may be living on fixed incomes and have little or no home-secured debt. The loans may be based on consumers' equity in their homes and not their ability to make the scheduled payments. When homeowners have trouble repaying, they are often encouraged to refinance the loan into another unaffordable, high-fee loan that increases the loan amount owed primarily due to financed fees and decreases the consumers' equity in their homes. (This practice is referred to as "loan flipping" or "equity stripping.") The loan transactions also may involve fraud, misrepresentations, and other deceptive practices.

The Home Ownership and Equity Protection Act

In response to the anecdotal evidence about abusive practices involving high-cost home-secured loans, in 1994 the Congress enacted the Home Ownership and Equity Protection Act (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325, 108 Stat. 2160, as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* TILA is intended to promote the informed use of

consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the "finance charge") and as an annual percentage rate (the "APR"). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z, 12 CFR part 226.

HOEPA does not prohibit creditors from making any type of home-secured loan, nor does it limit or cap rates that creditors may charge. Instead, HOEPA identifies a class of high-cost mortgage loans through rate and fee triggers, and it provides consumers entering into these transactions with special protections. A loan is covered by HOEPA if (1) the APR exceeds the rate for Treasury securities with a comparable maturity by more than 10 percentage points, or (2) the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or \$400. The \$400 figure is adjusted annually based on the Consumer Price Index; for 2001 it is \$465. 65 FR 70465, Nov. 24, 2000.

HOEPA is implemented in § 226.32 of the Board's Regulation Z, effective in October 1995. 60 FR 15463, March 24, 1995. HOEPA also amended TILA to require additional disclosures for reverse mortgages, that are contained in "§ 226.33 of Regulation Z. For purposes of this notice of proposed rulemaking, however, the term "HOEPA-covered loan" or "HOEPA loan" generally refers only to mortgages covered by "§ 226.32 that meet HOEPA's rate or fee-based triggers.

Creditors offering HOEPA-covered loans must give consumers an abbreviated disclosure statement at least three business days before the loan is closed, in addition to the disclosures generally required by TILA before or at closing. The HOEPA disclosure informs consumers that they are not obligated to complete the transaction and could lose their home if they take the loan and fail to make payments. It includes a few key cost disclosures, including the APR. In loans where consumers have three business days after closing to rescind the loan, the HOEPA disclosure affords consumers a minimum of six business days to consider key loan terms before receiving the loan proceeds.

HOEPA also restricts certain loan terms based on evidence that they had been associated with abusive lending practices. These terms include short-