information relating to fraudulent transactions deleted;

d. An explanation of how the customer may obtain a credit report free of charge; and

e. Information about the availability of the FTC's online guidance regarding steps a consumer can take to protect against identity theft. The notice should encourage the customer to report any incidents of identity theft to the FTC, and should provide the FTC's Web site address and toll-free telephone number that customers may use to obtain the identity theft guidance and report suspected incidents of identity theft.[15]

2. The Agencies encourage financial institutions to notify the nationwide consumer reporting agencies prior to sending notices to a large number of customers that include contact information for the reporting agencies.

*C. Delivery of Customer Notice*

Customer notice should be delivered in any manner designed to ensure that a customer can reasonably be expected to receive it. For example, the institution may choose to contact all customers affected by telephone or by mail, or by electronic mail for those customers for whom it has a valid e-mail address and who have agreed to receive communications electronically.

[66 FR 8636, Feb. 1, 2001, as amended at 70 FR 15751, 15753, Mar. 29, 2005; 71 FR 5780, Feb. 3, 2006]

# PART 226—TRUTH IN LENDING (REGULATION Z)

## Subpart A—General

Sec.



## Subpart B—Open-End Credit



## Subpart C—Closed-End Credit



## Subpart D—Miscellaneous



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



## Subpart F—Electronic Communication



[15] Currently, the FTC Web site for the ID Theft brochure and the FTC Hotline phone number are *http://www.consumer.gov/idtheft* and 1–877–IDTHEFT. The institution may also refer customers to any materials developed pursuant to section 151(b) of the FACT Act (educational materials developed by the FTC to teach the public how to prevent identity theft).

AUTHORITY: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

SOURCE: Reg. Z, 46 FR 20892, Apr. 7, 1981, unless otherwise noted.

## Subpart A—General

### § 226.1 Authority, purpose, coverage, organization, enforcement and liability.

(a) *Authority*. This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). This regulation also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552). Information-collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB number 7100–0199.

(b) *Purpose*. The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling.

(c) *Coverage*. (1) In general, this regulation applies to each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly;[1] (iii) the credit is subject to a finance charge or is payable by a written agreement in more than 4 installments; and (iv) the credit is primarily for personal, family, or household purposes.

(2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than 4 installments, or if the credit card is to be used for business purposes.

(3) In addition, certain requirements of § 226.5b apply to persons who are not creditors but who provide applications for home equity plans to consumers.

(d) *Organization*. The regulation is divided into subparts and appendices as follows:

(1) Subpart A contains general information. It sets forth: (i) The authority, purpose, coverage, and organization of the regulation; (ii) the definitions of basic terms; (iii) the transactions that are exempt from coverage; and (iv) the method of determining the finance charge.

(2) Subpart B contains the rules for open-end credit. It requires that initial disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home equity plans subject to the requirements of §§ 226.5a and 226.5b, respectively.

(3) Subpart C relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentage rate calculations, rescission requirements, and advertising.

(4) Subpart D contains rules on oral disclosures, Spanish language disclosure in Puerto Rico, record retention,

[1] The meaning of *regularly* is explained in the definition of *creditor* in § 226.2(a).

effect on state laws, state exemptions, and rate limitations.

(5) Subpart E contains special rules for mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for loans that have rates and fees above specified amounts. Section 226.33 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with mortgage transactions.

(6) Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of staff interpretations, special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions and total annual loan cost rates for reverse mortgage transactions.

(e) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the act and the regulation. Section 1204(c) of title XII of the Competitive Equality Banking Act of 1987, Pub. L. 100–86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the act.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 52 FR 43181, Nov. 9, 1987; 54 FR 13865, Apr. 6, 1989; 54 FR 24686, June 9, 1989; 60 FR 15471, Mar. 24, 1995; 66 FR 65617, Dec. 20, 2001]

### § 226.2 Definitions and rules of construction.

(a) *Definitions.* For purposes of this regulation, the following definitions apply:

(1) *Act* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

(2) *Advertisement* means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

(3) [Reserved][2]

(4) *Billing cycle* or *cycle* means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than 4 days from the regular day or date of the periodic statement.

(5) *Board* means the Board of Governors of the Federal Reserve System.

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of § 226.31, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(7) *Card issuer* means a person that issues a credit card or that person's agent with respect to the card.

(8) *Cardholder* means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person. For purposes of § 226.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial, or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

(9) *Cash price* means the price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

(10) *Closed-end credit* means consumer credit other than *open-end credit* as defined in this section.

(11) *Consumer* means a cardholder or a natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 226.15

[2] [Reserved]

and 226.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

(12) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(13) *Consummation* means the time that a consumer becomes contractually obligated on a credit transaction.

(14) *Credit* means the right to defer payment of debt or to incur debt and defer its payment.

(15) *Credit card* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit. *Charge card* means a credit card on an account for which no periodic rate is used to compute a finance charge.

(16) *Credit sale* means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

(17) *Creditor* means: (i) A person (A) who regularly extends consumer credit[3] that is subject to a finance charge or is payable by written agreement in more than 4 installments (not including a downpayment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(ii) For purposes of §§226.4(c)(8) (discounts), 226.9(d) (Finance charge imposed at time of transaction), and 226.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card.

(iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than 4 installments.

(iv) For purposes of subpart B (except for the credit and charge card disclosures contained in §§226.5(a) and 226.9 (e) and (f), the finance charge disclosures contained in §§226.6(a) and 226.7 (d) through (g) and the right of rescission set forth in §226.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than 4 installments.

(18) *Downpayment* means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(19) *Dwelling* means a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(20) *Open-end credit* means consumer credit extended by a creditor under a plan in which:

(i) The creditor reasonably contemplates repeated transactions;

(ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

[3] A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of §226.32) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of §226.32 or one or more such credit extensions through a mortgage broker.

(21) *Periodic rate* means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(22) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(23) *Prepaid finance charge* means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(24) *Residential mortgage transaction* means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(25) *Security interest* means an interest in property that secures performance of a consumer credit obligation and that is recognized by State or Federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosure under §§ 226.6 and 226.18, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under §§ 226.15 and 226.23, the term does include interests that arise solely by operation of law.

(26) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words *obligation* and *transaction* are used in this regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word *credit* is used in this regulation, it means *consumer credit* unless the context clearly indicates otherwise.

(3) Unless defined in this regulation, the words used have the meanings given to them by state law or contract.

(4) Footnotes have the same legal effect as the text of the regulation.

(5) Where the word ''amount'' is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

[Reg. Z, 46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981, as amended at 47 FR 7392, Feb. 19, 1982; 48 FR 14886, Apr. 6, 1983; 54 FR 13865, Apr. 6, 1989; 60 FR 15471, Mar. 24, 1995; 61 FR 49245, Sept. 19, 1996; 69 FR 16773, Mar. 31, 2004]

### § 226.3 Exempt transactions.

This regulation does not apply to the following:[4]

(a) *Business, commercial, agricultural, or organizational credit.* (1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(b) *Credit over $25,000 not secured by real property or a dwelling.* An extension of credit not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000.

(c) *Public utility credit.* An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

[4] The provisions in § 226.12 (a) and (b) governing the issuance of credit cards and the liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.

(d) *Securities or commodities accounts*. Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) *Home fuel budget plans*. An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(f) *Student loan programs*. Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

[46 FR 20892, Apr. 7, 1981, as amended at 48 FR 14886, Apr. 6, 1983; 49 FR 46991, Nov. 30, 1984]

### § 226.4 Finance charge.

(a) *Definition*. The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties*. The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or

(ii) retains a portion of the third-party charge, to the extent of the portion retained.

(2) *Special rule; closing agent charges*. Fees charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor:

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) *Special rule; mortgage broker fees*. Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) *Example of finance charge*. The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) *Debt cancellation fees*. Charges or premiums paid for debt cancellation coverage written in connection with a credit transaction, whether or not the debt cancellation coverage is insurance under applicable law.

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) *Real-estate related fees.* The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary and credit report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation or flood hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the Act.

(d) *Insurance and debt cancellation coverage*—(1) *Voluntary credit insurance premiums.* Premiums for credit life, accident, health or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under §226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the request.

(2) Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property,[5] may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice,[6] and this fact is disclosed.

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under §226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) *Voluntary debt cancellation fees.* (i) Charges or premiums paid for debt cancellation coverage of the type specified in paragraph (d)(3)(ii) of this section may be excluded from the finance charge, whether or not the coverage is

[5] This includes single interest insurance if the insurer waives all right of subrogation against the consumer.

[6] A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.

insurance, if the following conditions are met:

(A) The debt cancellation agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

(B) The fee or premium for the initial term of coverage is disclosed. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

(C) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the request.

(ii) Paragraph (d)(3)(i) of this section applies to fees paid for debt cancellation coverage that provides for cancellation of all or part of the debtor's liability for amounts exceeding the value of the collateral securing the obligation, or in the event of the loss of life, health, or income or in case of accident.

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) *Taxes on security instruments.* Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 61 FR 49245, Sept. 19, 1996]

## Subpart B—Open-End Credit

### § 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing,[7] in a form that the consumer may keep.[8]

(2) The terms *finance charge* and *annual percentage rate*, when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.[9]

(3) Certain disclosures required under § 226.5a for credit and charge card applications and solicitations must be provided in a tabular format or in a prominent location in accordance with the requirements of that section.

(4) For rules governing the form of disclosures for home equity plans, see § 226.5b(a).

(5) *Electronic communication.* For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see § 226.36.

(b) *Time of disclosures*—(1) *Initial disclosures.* The creditor shall furnish the initial disclosure statement required

[7] The disclosure required by § 226.9(d) when a finance charge is imposed at the time of a transaction need not be written.

[8] The disclosures required under § 226.5a for credit and charge card applications and solicitations, the home equity disclosures required under § 226.5b(d), the alternative summary billing rights statement provided for in § 226.9(a)(2), the credit and charge card renewal disclosures required under § 226.9(e), and the disclosures made under § 226.10(b) about payment requirements need not be in a form that the consumer can keep.

[9] The terms need not be more conspicuous when used under § 226.5a generally for credit and charge card applications and solicitations under § 226.7(d) on periodic statements, under § 226.9(e) in credit and charge card renewal disclosures, and under § 226.16 in advertisements. (But see special rule for annual percentage rate for purchases, § 226.5a(b)(1).)

by § 226.6 before the first transaction is made under the plan.

(2) *Periodic statements.* (i) The creditor shall mail or deliver a periodic statement as required by § 226.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, or if delinquency collection proceedings have been instituted, or if furnishing the statement would violate Federal law.

(ii) The creditor shall mail or deliver the periodic statement at least 14 days prior to any date or the end of any time period required to be disclosed under § 226.7(j) in order for the consumer to avoid an additional finance or other charge.[10] A creditor that fails to meet this requirement shall not collect any finance or other charge imposed as a result of such failure.

(3) *Credit and charge card application and solicitation disclosures.* The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of § 226.5a.

(4) *Home equity plans.* Disclosures for home equity plans shall be made in accordance with the timing requirements of § 226.5b(b).

(c) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers.* If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 226.15 is applicable, however, the disclosures required by §§ 226.6 and 226.15(b) shall be made to each consumer having the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this regulation, although new disclosures may be required under § 226.9(c).

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 54 FR 13865, Apr. 6, 1989; 54 FR 24686, June 9, 1989; 65 FR 58908, Oct. 3, 2000; 66 FR 17338, Mar. 30, 2001]

### § 226.5a Credit and charge card applications and solicitations.

(a) *General rules.* The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) *Definition of solicitation.* For purposes of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application.

(2) *Form of disclosures.* (i) The disclosures in paragraphs (b) (1) through (7) of this section shall be provided in a prominent location on or with an application or a solicitation, or other applicable document, and in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in appendix G.

(ii) The disclosures in paragraphs (b)(8) through (11) of this section shall be provided either in the table containing the disclosures in paragraphs (b)(1) through (7), or clearly and conspicuously elsewhere on or with the application or solicitation.

(iii) The disclosure required under paragraph (b)(5) of this section shall contain the term *grace period*.

(iv) The terminology in the disclosures under paragraph (b) of this section shall be consistent with that to be used in the disclosures under §§ 226.6 and 226.7.

(3) *Exceptions.* This section does not apply to home-equity plans accessible by a credit or charge card that are of

[10] This timing requirement does not apply if the creditor is unable to meet the requirement because of an act of God, war, civil disorder, natural disaster, or strike.

the type subject to the requirements of §226.5b; overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; or lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines.

(4) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(5) *Certain fees that vary by state.* If the amount of any fee referred to in paragraphs (b)(8) through (11) of this section varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), or (e) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), and (7) through (11) of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by §226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 18-point type, except for the following: a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate that will apply upon the occurrence of one or more specific events.

(i) If the account has a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined.

(ii) When variable rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable rate disclosures are provided under paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosures. Disclosures provided by electronic communication are subject to paragraph (b)(1)(iii) of this section.

(iii) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before mailing the disclosures to a consumer's electronic mail address. If disclosures are made available at another location such as the card issuer's Internet web site, the annual percentage rate must be one in effect within the last 30 days.

(2) *Fees for issuance or availability.* Any annual or other periodic fee, expressed as an annualized amount, or any other fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity.

(3) *Minimum finance charge.* Any minimum or fixed finance charge that could be imposed during a billing cycle.

(4) *Transaction charges.* Any transaction charge imposed for the use of the card for purchases.

(5) *Grace period.* The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average.

(6) *Balance computation method.* The name of the balance computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not

listed. The explanation may appear outside the table if the table contains a reference to the explanation. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) *Statement on charge card payments.* A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash.

(9) *Late payment fee.* Any fee imposed for a late payment.

(10) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(11) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(c) *Direct-mail and electronic applications and solicitations.* The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided by electronic communication.

(d) *Telephone applications and solicitations*—(1) *Oral disclosure.* The card issuer shall orally disclose the information in paragraphs (b) (1) through (7) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) *Alternative disclosure.* The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either does not impose a fee described in paragraph (b)(2) of this section or does not impose such a fee unless the consumer uses the card, and the card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(i) The applicable information in paragraph (b) of this section; and

(ii) The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card.

(e) *Applications and solicitations made available to general public.* The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (e) (1), (2) or (3) of this section.

(1) *Disclosure of required credit information.* The card issuer may disclose in a prominent location on the application or solicitation the following:

(i) The applicable information in paragraph (b) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) *Inclusion of certain initial disclosures.* The card issuer may disclose on or with the application or solicitation the following:

(i) The disclosures required under §226.6 (a) through (c); and

(ii) A statement that the consumer should contact the card issuer for any change in the required information, and a toll-free telephone number or a mailing address for that purpose.

(3) *No disclosure of credit information.* If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(i) There are costs associated with the use of the card; and

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(4) *Prompt response to requests for information.* Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(f) *Special charge card rule—card issuer and person extending credit not the same person.* If a cardholder may by use of a charge card access an open-end credit plan that is not maintained by the charge card issuer, the card issuer need not provide the disclosures in paragraphs (c), (d) or (e) of this section for the open-end credit plan if the card issuer states on or with an application or a solicitation the following:

(1) The card issuer will make an independent decision whether to issue the card;

(2) The charge card may arrive before the decision is made about extending credit under the open-end credit plan; and

(3) Approval for the charge card does not constitute approval for the open-end credit plan.

(g) *Balance computation methods defined.* The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late fees, annual fees and unpaid finance charges do not constitute separate balance computation methods.

(1)(i) *Average daily balance (including new purchases).* This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(ii) *Average daily balance (excluding new purchases).* This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2)(i) *Two-cycle average daily balance (including new purchases).* This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(ii) *Two-cycle average daily balance (excluding new purchases).* This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(3) *Adjusted balance.* This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(4) *Previous balance.* This balance is the outstanding balance at the beginning of the billing cycle.

[Reg. Z, 54 FR 13865, Apr. 6, 1989, as amended at 54 FR 24686, June 9, 1989; 54 FR 32954, Aug. 11, 1989; 65 FR 17131, Mar. 31, 2000; 65 FR 58908, Oct. 3, 2000; 66 FR 17338, Mar. 30, 2001]

## § 226.5b Requirements for home equity plans.

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under § 226.14(b).

(a) *Form of disclosures*—(1) *General.* The disclosures required by paragraph (d) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (d)(4)(iii), the itemization of third-party fees described in paragraph (d)(8), and the variable-rate information described in paragraph (d)(12) of this section may be provided separately from the other required disclosures.

(2) *Precedence of certain disclosures.* The disclosures described in paragraph (d)(1) through (4)(ii) of this section shall precede the other required disclosures.

(b) *Time of disclosures.* The disclosures and brochure required by paragraphs

(d) and (e) of this section shall be provided at the time an application is provided to the consumer. [10a]

(c) *Duties of third parties*—(1) *General.* Persons other than the creditor who provide applications to consumers for home equity plans must provide the brochure required under paragraph (e) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (d) of this section for a creditor's home equity plan, they also shall provide the disclosures at such time. [10a]

(2) *Electronic communication.* Persons other than the creditor that are required to comply with paragraphs (d) and (e) of this section may use electronic communication in accordance with the requirements of § 226.36, as applicable.

(d) *Content of disclosures.* The creditor shall provide the following disclosures, as applicable:

(1) *Retention of information.* A statement that the consumer should make or otherwise retain a copy of the disclosures.

(2) *Conditions for disclosed terms.* (i) A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may receive a refund of all fees paid in connection with the application.

(3) *Security interest and risk to home.* A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(4) *Possible actions by creditor.* (i) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan.

(ii) A statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

(iii) In lieu of the disclosure required under paragraph (d)(4)(ii) of this section, a statement of such conditions.

(5) *Payment terms.* The payment terms of the plan, including:

(i) The length of the draw period and any repayment period.

(ii) An explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result. [10b]

(iii) An example, based on a $10,000 outstanding balance and a recent annual percentage rate, [10c] showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit.

If different payment terms may apply to the draw and any repayment period, or if different payment terms may

[10a] The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

[10b] A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

[10c] For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (d)(12)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.

apply within either period, the disclosures shall reflect the different payment terms.

(6) *Annual percentage rate.* For fixed-rate plans, a recent annual percentage rate [10c] imposed under the plan and a statement that the rate does not include costs other than interest.

(7) *Fees imposed by creditor.* An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

(8) *Fees imposed by third parties to open a plan.* A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.

(9) *Negative amortization.* A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(10) *Transaction requirements.* Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages.

(11) *Tax implications.* A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

(12) *Disclosures for variable-rate plans.* For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) The index used in making rate adjustments and a source of information about the index.

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(ix) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a $10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xi) An historical example, based on a $10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

(e) *Brochure.* The home equity brochure published by the Board or a suitable substitute shall be provided.

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise:

(1) Change the annual percentage rate unless:

(i) Such change is based on an index that is not under the creditor's control; and

(ii) Such index is available to the general public.

(2) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse mortgage transactions that are subject to paragraph (f)(4) of this section) unless:

(i) There is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance;

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security; or

(iv) Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

(3) Change any term, except that a creditor may:

(i) Provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) Change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) Make a specified change if the consumer specifically agrees to it in writing at that time.

(iv) Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.

(v) Make an insignificant change to terms.

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:

(A) The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;

(B) The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(C) The consumer is in default of any material obligation under the agreement;

(D) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or

(F) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

(4) For reverse mortgage transactions that are subject to § 226.33, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except:

(i) In the case of default;

(ii) If the consumer transfers title to the property securing the note;

(iii) If the consumer ceases using the property securing the note as the primary dwelling; or

(iv) Upon the consumer's death.

(g) *Refund of fees.* A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (d) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

(h) *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section.[10d]

[Reg. Z, 54 FR 24686, June 9, 1989, as amended at 55 FR 38312, Sept. 18, 1990; 55 FR 42148, Oct. 17, 1990; 57 FR 34681, Aug. 6, 1992; 60 FR 15471, Mar. 24, 1995; 66 FR 17338, Mar. 30, 2001]

### § 226.6 Initial disclosure statement.

The creditor shall disclose to the consumer, in terminology consistent with that to be used on the periodic statement, each of the following items, to the extent applicable:

(a) *Finance charge.* The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows:

(1) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(2) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[11] and the corresponding annual percentage rate.[12] When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed.

(3) An explanation of the method used to determine the balance on which the finance charge may be computed.

(4) An explanation of how the amount of any finance charge will be determined,[13] including a description of how any finance charge other than the periodic rate will be determined.

(b) *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.

(c) *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(d) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in appendix G.

(e) *Home equity plan information.* The following disclosures described in § 226.5b(d), as applicable:

(1) A statement of the conditions under which the creditor may take certain action, as described in § 226.5b(d)(4)(i), such as terminating the plan or changing the terms.

(2) The payment information described in § 226.5b(d)(5) (i) and (ii) for both the draw period and any repayment period.

(3) A statement that negative amortization may occur as described in § 226.5b(d)(9).

(4) A statement of any transaction requirements as described in § 226.5b(d)(10).

(5) A statement regarding the tax implications as described in § 226.5b(d)(11).

(6) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in §§ 226.5b(d)(6) and (d)(12)(ii).

(7) The variable-rate disclosures described in § 226.5b(d)(12) (viii), (x), (xi), and (xii), as well as the disclosure described in § 226.5b(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of

[10d] If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

[11] A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

[12] If a creditor is offering a variable rate plan, the creditor shall also disclose: (1) The circumstances under which the rate(s) may increase; (2) any limitations on the increase; and (3) the effect(s) of an increase.

[13] If no finance charge is imposed when the outstanding balance is less than a certain amount, no disclosure is required of that fact or of the balance below which no finance charge will be imposed.

payment option chosen by the consumer.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 54 FR 24688, June 9, 1989]

### § 226.7 Periodic statement.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

(b) *Identification of transactions.* An identification of each credit transaction in accordance with § 226.8.

(c) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge.

(d) *Periodic rates.* Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[14] and the corresponding annual percentage rate.[15] If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed.

(e) *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of the credits and payments shall be disclosed.

(f) *Amount of finance charge.* The amount of any finance charge debited or added to the account during the billing cycle, using the term *finance charge.* The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the appliction of any periodic rates and the amount(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(g) *Annual percentage rate.* When a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14, using the term *annual percentage rate.*

(h) *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

(i) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date.

(j) *Free-ride period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(k) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]

### § 226.8 Identification of transactions.

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable.[16]

(a) *Sale credit.* For each credit transaction involving the sale of property or services, the following rules shall apply:

---

[14] See footnotes 11 and 13.

[15] If a variable rate plan is involved, the creditor shall disclose the fact that the periodic rate(s) may vary.

[16] Failure to disclose the information required by this section shall not be deemed a failure to comply with the regulation if: (1) The creditor maintains procedures reasonably adapted to obtain and provide the information; and (2) the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e). This applies to transactions that take place outside a state, as defined in § 226.2(a), whether or not the creditor maintains procedures reasonably adapted to obtain the required information.

(1) *Copy of credit document provided.* When an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, the transaction is sufficiently identified if the amount of the transaction and either the date of the transaction or the date of debiting the transaction to the consumer's account are disclosed on the copy or on the periodic statement.

(2) *Copy of credit document not provided—creditor and seller same or related person(s).* When the creditor and the seller are the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction, and a brief identification[17] of the property or services purchased.[18]

(3) *Copy of credit document not provided—creditor and seller not same or related person(s).* When the creditor and seller are not the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction; the seller's name; and the city, and state or foreign country where the transaction took place.[19]

(b) *Nonsale credit.* A nonsale credit transaction is sufficiently identified if the first periodic statement reflecting the transaction discloses a brief identification of the transaction;[20] the amount of the transaction; and at least one of the following dates: the date of the transaction, the date of debiting the transaction to the consumer's account, or, if the consumer signed the credit document, the date appearing on the document. If an actual copy of the receipt or other credit document is provided and that copy shows the amount and at least one of the specified dates, the brief identification may be omitted.

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]

### §226.9 Subsequent disclosure requirements.

(a) *Furnishing statement of billing rights*—(1) *Annual statement.* The creditor shall mail or deliver the billing rights statement required by §226.6(d) at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under §226.5(b)(2) for any one billing cycle.

(2) *Alternative summary statement.* As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to that in appendix G.

(b) *Disclosures for supplemental credit devices and additional features*—(1) If a creditor, within 30 days after mailing or delivering the initial disclosures under §226.6(a), adds a credit feature to the consumer's account or mails or delivers to the consumer a credit device for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. After 30 days, if the creditor adds a credit feature or furnishes a credit device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or

[17] As an alternative to the brief identification, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor, and if the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with §226.13(e).

[18] An identification of property or services may be replaced by the seller's name and location of the transaction when: (1) The creditor and the seller are the same person; (2) the creditor's open-end plan has fewer than 15,000 accounts; (3) the creditor provides the consumer with point-of-sale documentation for that transaction; and (4) the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with §226.13(e).

[19] The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction (1) took place at a location that is not fixed; (2) took place in the consumer's home; or (3) was a mail or telephone order.

[20] See Footnote 17.

device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(2) Whenever a credit feature is added or a credit device is mailed or delivered, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by § 226.6(a) that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

(c) *Change in terms*—(1) *Written notice required.* Whenever any term required to be disclosed under § 226.6 is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer, or if a periodic rate or other finance charge is increased because of the consumer's delinquency or default; the notice shall be given, however, before the effective date of the change.

(2) *Notice not required.* No notice under this section is required when the change involves late payment charges, charges for documentary evidence, or over-the-limit charges; a reduction of any component of a finance or other charge; suspension of future credit privileges or termination of an account or plan; or when the change results from an agreement involving a court proceeding, or from the consumer's default or delinquency (other than an increase in the periodic rate or other finance charge).

(3) *Notice for home equity plans.* If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home equity plan pursuant to § 226.5b(f)(3)(i) or § 226.5b(f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

(d) *Finance charge imposed at time of transaction.* (1) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.

(2) The card issuer, if other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by paragraph (d)(1) of this section, and shall not consider any such charge for purposes of §§ 226.5a, 226.6 and 226.7.

(e) *Disclosures upon renewal of credit or charge card*—(1) *Notice prior to renewal.* Except as provided in paragraph (e)(2) of this section, a card issuer that imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to § 226.5a, including any fee based on account activity or inactivity, shall mail or deliver written notice of the renewal to the cardholder. The notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which the renewal fee is initially charged to the account. The notice shall contain the following information:

(i) The disclosures contained in § 226.5a(b) (1) through (7) that would apply if the account were renewed;[20a] and

(ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee.

(2) *Delayed notice.* The disclosures required by paragraph (e)(1) of this section may be provided later than the time in paragraph (e)(1) of this section, but no later than the mailing or the delivery of the periodic statement on which the renewal fee is initially charged to the account, if the card issuer also discloses at that time that:

(i) The cardholder has 30 days from the time the periodic statement is mailed or delivered to avoid paying the fee or to have the fee recredited if the cardholder terminates credit availability under the account; and

[20a] These disclosures need not be provided in tabular format or in a prominent location.

(ii) The cardholder may use the card during the interim period without having to pay the fee.

(3) *Notification on periodic statements.* The disclosures required by this paragraph may be made on or with a periodic statement. If any of the disclosures are provided on the back of a periodic statement, the card issuer shall include a reference to those disclosures on the front of the statement.

(f) *Change in credit card account insurance provided*—(1) *Notice prior to change.* If a credit card issuer plans to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account of the type subject to § 226.5a, the card issuer shall mail or deliver the cardholder written notice of the change not less than 30 days before the change in providers occurs. The notice shall also include the following items, to the extent applicable:

(i) Any increase in the rate that will result from the change;

(ii) Any substantial decrease in coverage that will result from the change; and

(iii) A statement that the cardholder may discontinue the insurance.

(2) *Notice when change in provider occurs.* If a change described in paragraph (f)(1) of this section occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items, to the extent applicable:

(i) The name and address of the new insurance provider;

(ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the rate to be charged; and

(iii) A statement that the cardholder may discontinue the insurance.

(3) *Substantial decrease in coverage.* For purposes of this paragraph, a substantial decrease in coverage is a decrease in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance. Significant terms of coverage include, for example, the following:

(i) Type of coverage provided;

(ii) Age at which coverage terminates or becomes more restrictive;

(iii) Maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;

(iv) Eligibility requirements and number and identity of persons covered;

(v) Definition of a key term of coverage such as disability;

(vi) Exclusions from or limitations on coverage; and

(vii) Waiting periods and whether coverage is retroactive.

(4) *Combined notification.* The notices required by paragraph (f) (1) and (2) of this section may be combined provided the timing requirement of paragraph (f)(1) of this section is met. The notices may be provided on or with a periodic statement.

[Reg. Z, 46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981, as amended at 54 FR 13867, Apr. 6, 1989; 54 FR 24688, June 9, 1989; 54 FR 32954, Aug. 11, 1989; 55 FR 38312, Sept. 18, 1990; 55 FR 42148, Oct. 17, 1990]

### § 226.10 Prompt crediting of payments.

(a) *General rule.* A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.

(b) *Specific requirements for payments.* If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within 5 days of receipt.

(c) *Adjustment of account.* If a creditor fails to credit a payment, as required by paragraphs (a) and (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

### § 226.11 Treatment of credit balances.

When a credit balance in excess of $1 is created on a credit account (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer), the creditor shall:

(a) Credit the amount of the credit balance to the consumer's account;

(b) Refund any part of the remaining credit balance within 7 business days from receipt of a written request from the consumer; and

(c) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than 6 months. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

### § 226.12 Special credit card provisions.

(a) *Issuance of credit cards.* Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except:

(1) In response to an oral or written request or application for the card; or

(2) As a renewal of, or substitute for, an accepted credit card.[21]

(b) *Liability of cardholder for unauthorized use*—(1) *Limitation on amount.* The liability of a cardholder for unauthorized use[22] of a credit card shall not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) *Conditions of liability.* A cardholder shall be liable for unauthorized use of a credit card only if:

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided adequate notice[23] of the cardholder's maximum potential liability and of means by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder's liability shall not exceed $50 (or any lesser amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

(iii) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(3) *Notification to card issuer.* Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) *Effect of other applicable law or agreement.* If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the lesser liability shall govern.

(5) *Business use of credit cards.* If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for

[21] For purposes of this section, *accepted credit card* means any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with this paragraph becomes an accepted credit card when received by the cardholder.

[22] *Unauthorized use* means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

[23] *Adequate notice* means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. The notice may be given by any means reasonably assuring receipt by the cardholder.

unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with this section.

(c) *Right of cardholder to assert claims or defenses against card issuer* [24]—(1) *General rule.* When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.[25]

(2) *Adverse credit reports prohibited.* If, in accordance with paragraph (c)(1) of this section, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

(3) *Limitations.* The rights stated in paragraphs (c)(1) and (2) of this section apply only if:

(i) The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and

(ii) The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50, and the disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.[26]

(d) *Offsets by card issuer prohibited.* (1) A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) This paragraph does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) This paragraph does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 226.13(d)(1)).

(e) *Prompt notification of returns and crediting of refunds.* (1) When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within 7

[24] This paragraph does not apply to the use of a check guarantee card or a debit card in connection with an overdraft credit plan, or to a check guarantee card used in connection with cash advance checks.

[25] The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. To determine the amount of credit outstanding for purposes of this section, payments and other credits shall be applied to: (1) Late charges in the order of entry to the account; then to (2) finance charges in the order of entry to the account; and then to (3) any other debits in the order of entry to the account. If more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

[26] The limitations stated in paragraph (c)(3)(ii) of this section shall not apply when the person honoring the credit card: (1) Is the same person as the card issuer; (2) is controlled by the card issuer directly or indirectly; (3) is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer; (4) controls the card issuer directly or indirectly; (5) is a franchised dealer in the card issuer's products or services; or (6) has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.

business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) The card issuer shall, within 3 business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor shall also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. This section does not require refunds for returns nor does it prohibit refunds in kind.

(f) *Discounts; tie-in arrangements.* No card issuer may, by contract or otherwise:

(1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) *Relation to Electronic Fund Transfer Act and Regulation E.* For guidance on whether Regulation Z (12 CFR part 226) or Regulation E (12 CFR part 205) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 205.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 65 FR 17131, Mar. 31, 2000]

### § 226.13 Billing error resolution.[27]

(a) *Definition of billing error.* For purposes of this section, the term *billing error* means:

(1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan.

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§ 226.7(b) and 226.8.

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

[27] A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under section 161(e) of the Act for failure to comply with any of the requirements of this section.

(b) *Billing error notice.*[28] A billing error notice is a written notice[29] from a consumer that:

(1) Is received by a creditor at the address disclosed under § 226.7(k) no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) *Time for resolution; general procedures.* (1) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within the 30-day period; and

(2) The creditor shall comply with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

(d) *Rules pending resolution.* Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply:

(1) *Consumer's right to withhold disputed amount; collection action prohibited.* The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges).[30] If the cardholder maintains a deposit account with the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to 3 business days before the scheduled payment date.

(2) *Adverse credit reports prohibited.* The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(e) *Procedures if billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

(f) *Procedures if different billing error or no billing error occurred.* If, after conducting a reasonable investigation,[31] a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

---

[28] The creditor need not comply with the requirements of paragraphs (c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice.

[29] The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by §§ 226.6(d) and 226.9(a).

[30] A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

[31] If a consumer submits a billing error notice alleging either the nondelivery of property or services under paragraph (a)(3) of this section or that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card has made an incorrect report to the card issuer, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered, mailed, or sent as agreed or that the information was correct.

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

(1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;

(2) Shall allow any time period disclosed under §§ 226.6(a)(1) and 226.7(j), during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges;

(3) May report an account or amount as delinquent because the amount due under paragraph (g)(1) of this section remains unpaid after the creditor has allowed any time period disclosed under §§ 226.6(a)(1) and 266.7(j) or 10 days (whichever is longer) during which the consumer can pay the amount; but

(4) May not report that an amount or account is delinquent because the amount due under paragraph (g)(1) of the section remains unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:

(i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

(h) *Reassertion of billing error.* A creditor that has fully complied with the requirements of this section has no further responsibilities under this section (other than as provided in paragraph (g)(4) of this section) if a consumer reasserts substantially the same billing error.

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E, 12 CFR 205.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.

### § 226.14 Determination of annual percentage rate.

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than $\frac{1}{8}$ of 1 percentage point above or below the annual percentage rate determined in accordance with this section.[31a]

(b) *Annual percentage rate for §§ 226.5a and 226.5b disclosures, for initial disclosures and for advertising purposes.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§ 226.5a, 226.5b, 226.6, and 226.16 shall be computed by multiplying each periodic rate by the number of periods in a year.

(c) *Annual percentage rate for periodic statements.* The annual percentage rate(s) to be disclosed for purposes of

[31a] An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if: (1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Board in writing of the error in the calculation tool.

§ 226.7(d) shall be computed by multiplying each periodic rate by the number of periods in a year and, for purposes of § 226.7(g), shall be determined as follows:

(1) If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

(i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable [32] and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.[33]

(3) If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year,[34] except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.[35]

(4) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) and (3) of this section.

(d) *Calculations where daily periodic rate applied.* If the provisions of paragraph (c)(1)(ii) or (2) of this section apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either:

(1) By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

(2) By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 47 FR 756, Jan. 7, 1982; 48 FR 14886, Apr. 6, 1983; 54 FR 24688, June 9, 1989]

## § 226.15 Right of rescission.

(a) *Consumer's right to rescind.* (1)(i) Except as provided in paragraph (a)(1)(ii) of this section, in a credit plan in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind: each credit extension made under the plan; the plan when the plan is opened; a security interest when added or increased to secure an existing plan; and the increase when a credit limit on the plan is increased.

(ii) As provided in section 125(e) of the Act, the consumer does not have

[32] If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section.

[33] Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening of the account, the amount of such charge shall not be included in the calculation of the annual percentage rate.

[34] See appendix F regarding determination of the denominator of the fraction under this paragraph.

[35] See footnote 33.

the right to rescind each credit extension made under the plan if such extension is made in accordance with a previously established credit limit for the plan.

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other means of written communication. Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in paragraph (a)(1) of this section that gave rise to the right of rescission, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures,[36] whichever occurs last. If the required notice and material disclosures are not delivered, the right to rescind shall expire 3 years after the occurrence giving rise to the right of rescission, or upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act.

(4) When more than one consumer has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) *Notice of right to rescind.* In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered by electronic communication as provided in § 226.36(b)). The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind, as described in paragraph (a)(1) of this section.

(3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission, as described in paragraph (d) of this section.

(5) The date the rescission period expires.

(c) *Delay of creditor's performance.* Unless a consumer waives the right to rescind under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed, and no materials delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. A creditor does not violate this section if a third party with no knowledge of the event activating the rescission right does not delay in providing materials or services, as long as the debt incurred for those materials or services is not secured by the property subject to rescission.

(d) *Effects of rescission.* (1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void, and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of

[36] The term *material disclosures* means the information that must be provided to satisfy the requirements in § 226.6 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan, and the payment information described in § 226.5b(d)(5)(i) and (ii) that is required under § 226.6(e)(2).

property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

(e) *Consumer's waiver of right to rescind.* (1) The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited, except as provided in paragraph (e)(2) of this section.

(2) The need of the consumer to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1993, pursuant to 42 U.S.C. 5170, to be a major disaster area because of severe storms and flooding in the Midwest.[36a] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

(3) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in the South.[36b] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

(4) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during October 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in Texas.[36c] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

(f) *Exempt transactions.* The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A credit plan in which a state agency is a creditor.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 54 FR 24688, June 9, 1989; 58 FR 40583, July 29, 1993; 59 FR 40204, Aug. 5, 1994; 59 FR 63715, Dec. 9, 1994; 66 FR 17338, Mar. 30, 2001]

## § 226.16 Advertising.

(a) *Actually available terms.* If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under § 226.6 is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following:[36d]

[36a] A list of the affected areas will be maintained by the Board.

[36b] A list of the affected areas will be maintained and published by the Board. Such areas now include parts of Alabama, Florida, and Georgia.

[36c] A list of the affected areas will be maintained and published by the Board. Such areas now include the following counties in Texas: Angelina, Austin, Bastrop, Brazos, Brazoria, Burleson, Chambers, Fayette, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Lee, Liberty, Madison, Matagorda, Montgomery, Nacagdoches, Orange, Polk, San Augustine, San Jacinto, Shelby, Trinity, Victoria, Washington, Waller, Walker, and Wharton.

[36d] The disclosures given in accordance with § 226.5a do not constitute advertising

*Continued*

(1) Any minimum, fixed, transaction, activity or similar charge that could be imposed.

(2) Any periodic rate that may be applied expressed as an annual percentage rate as determined under § 226.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

(3) Any membership or participation fee that could be imposed.

(c) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an advertisement using electronic communication, gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an advertisement using electronic communication complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(d) *Additional requirements for home equity plans*—(1) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under § 226.6(a) or (b) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home equity plan subject to the requirements of § 226.5b, the advertisement also shall clearly and conspicuously set forth the following:

(i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under section § 226.14(b).

terms for purposes of the requirements of this section.

(iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) *Discounted and premium rates.* If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state the period of time such rate will be in effect, and, with equal prominence to the initial rate, a reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) *Balloon payment.* If an advertisement contains a statement about any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment may result.[36e]

(4) *Tax implications.* An advertisement that states that any interest expense incurred under the home equity plan is or may be tax deductible may not be misleading in this regard.

(5) *Misleading terms.* An advertisement may not refer to a home equity plan as ''free money'' or contain a similarly misleading term.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 54 FR 13867, Apr. 6, 1989; 54 FR 24688, June 9, 1989; 54 FR 28665, July 7, 1989; 58 FR 40583, July 29, 1993; 59 FR 40204, Aug. 5, 1994; 59 FR 63715, Dec. 9, 1994; 66 FR 17338, Mar. 30, 2001]

## Subpart C—Closed-End Credit

### § 226.17 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related[37] to the disclosures required under § 226.18.[38] The itemization

[36e] See footnote 10b.

[37] The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.

[38] The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 226.18(a), the variable rate example

of the amount financed under §226.18(c)(1) must be separate from the other disclosures under that section.

(2) The terms *finance charge* and *annual percentage rate*, when required to be disclosed under §226.18 (d) and (e) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under §226.18(a).

(3) *Electronic communication.* For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see §226.36.

(b) *Time of disclosures.* The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in §226.19(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in §226.19(b) and §226.20(c). In certain transactions involving mail or telephone orders or a series of sales, the timing of disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

(c) *Basis of disclosures and use of estimates.* (1) The disclosures shall reflect the terms of the legal obligation between the parties.

(2)(i) If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate.

(ii) For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

(3) The creditor may disregard the effects of the following in making calculations and disclosures.

(i) That payments must be collected in whole cents.

(ii) That dates of scheduled payments and advances may be changed because the scheduled date is not a business day.

(iii) That months have different numbers of days.

(iv) The occurrence of leap year.

(4) In making calculations and disclosures, the creditor may disregard any irregularity in the first period that falls within the limits described below and any payment schedule irregularity that results from the irregular first period:

(i) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period;

(ii) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period; and

(iii) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(5) If an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of 1 year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures shall be based on that date.

(6)(i) A series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction.

(ii) When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

(d) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable

under §226.18(f)(1)(iv), insurance or debt cancellation under §226.18(n), and certain security interest charges under §226.18(o).

under § 226.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this regulation, although new disclosures may be required under paragraph (f) of this section, § 226.19, or § 226.20.

(f) *Early disclosures.* If disclosures required by this subpart are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation:[39]

(1) Any changed term unless the term was based on an estimate in accordance with § 226.17(c)(2) and was labelled an estimate;

(2) All changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction, or more than 1/4 of 1 percentage point in an irregular transaction, as defined in § 226.22(a).

(g) *Mail or telephone orders—delay in disclosures.* If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form to the consumer or to the public before the actual purchase order or request:

(1) The cash price or the principal loan amount.

(2) The total sale price.

(3) The finance charge.

(4) The annual percentage rate, and if the rate may increase after consummation, the following disclosures:

(i) The circumstances under which the rate may increase.

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(5) The terms of repayment.

(h) *Series of sales—delay in disclosures.* If a credit sale is one of a series made under an agreement providing that subsequent sales may be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale, if the following two conditions are met:

(1) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(2) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For purposes of this provision, in the case of items purchased on different dates, the first purchased is deemed the first item paid for; in the case of items purchased on the same date, the lowest priced is deemed the first item paid for.

(i) *Interim student credit extensions.* For each transaction involving an interim credit extension under a student credit program, the creditor need not make the following disclosures: the finance charge under § 226.18(d), the payment schedule under § 226.18(g), the total of payments under § 226.18(h), or the total sale price under § 226.18(j).

[46 FR 20892, Apr. 7, 1981, as amended at 52 FR 48670, Dec. 24, 1987; 61 FR 49246, Sept. 19, 1996; 66 FR 17338, Mar. 30, 2001; 67 FR 16982, Apr. 9, 2002]

### § 226.18 Content of disclosures.

For each transaction, the creditor shall disclose the following information as applicable:

(a) *Creditor.* The identity of the creditor making the disclosures.

(b) *Amount financed.* The *amount financed,* using that term, and a brief description such as *the amount of credit provided to you or on your behalf.* The amount financed is calculated by:

(1) Determining the principal loan amount or the cash price (subtracting any downpayment);

(2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and

(3) Subtracting any prepaid finance charge.

[39] For certain residential mortgage transactions, § 226.19(a)(2) permits redisclosure no later than consummation or settlement, whichever is later.

(c) *Itemization of amount financed.* (1) A separate written itemization of the amount financed, including:[40]

(i) The amount of any proceeds distributed directly to the consumer.

(ii) The amount credited to the consumer's account with the creditor.

(iii) Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons.[41]

(iv) The prepaid finance charge.

(2) The creditor need not comply with paragraph (c)(1) of this section if the creditor provides a statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.

(d) *Finance charge.* The *finance charge,* using that term, and a brief description such as ''the dollar amount the credit will cost you.''

(1) *Mortgage loans.* In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

(i) Is understated by no more than $100; or

(ii) Is greater than the amount required to be disclosed.

(2) *Other credit.* In any other transaction, the amount disclosed as the finance charge shall be treated as accurate if, in a transaction involving an amount financed of $1,000 or less, it is not more than $5 above or below the amount required to be disclosed; or, in a transaction involving an amount financed of more than $1,000, it is not more than $10 above or below the amount required to be disclosed.

(e) *Annual percentage rate.* The *annual percentage rate,* using that term, and a brief description such as ''the cost of your credit as a yearly rate.''[42]

(f) *Variable rate.* (1) If the annual percentage rate may increase after consummation in a transaction not secured by the consumer's principal dwelling or in a transaction secured by the consumer's principal dwelling with a term of one year or less, the following disclosures:[43]

(i) The circumstances under which the rate may increase.

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(iv) An example of the payment terms that would result from an increase.

(2) If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures:

(i) The fact that the transaction contains a variable-rate feature.

(ii) A statement that variable-rate disclosures have been provided earlier.

(g) *Payment schedule.* The number, amounts, and timing of payments scheduled to repay the obligation.

(1) In a demand obligation with no alternate maturity date, the creditor may comply with this paragraph by disclosing the due dates or payment periods of any scheduled interest payments for the first year.

(2) In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing the following information:

(i) The dollar amounts of the largest and smallest payments in the series.

---

[40] Good faith estimates of settlement costs provided for transactions subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) may be substituted for the disclosures required by paragraph (c) of this section.

[41] The following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.

[42] For any transaction involving a finance charge of $5 or less on an amount financed of $75 or less, or a finance charge of $7.50 or less on an amount financed of more than $75, the creditor need not disclose the annual percentage rate.

[43] Information provided in accordance with §§ 226.18(f)(2) and 226.19(b) may be substituted for the disclosures required by paragraph (f)(1) of this section.

(ii) A reference to the variations in the other payments in the series.

(h) *Total of payments.* The *total of payments*, using that term, and a descriptive explanation such as ''the amount you will have paid when you have made all scheduled payments.'' [44]

(i) *Demand feature.* If the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of 1 year as provided in § 226.17(c)(5), that fact shall also be disclosed.

(j) *Total sale price.* In a credit sale, the *total sale price*, using that term, and a descriptive explanation (including the amount of any downpayment) such as ''the total price of your purchase on credit, including your downpayment of $____.'' The total sale price is the sum of the cash price, the items described in paragraph (b)(2), and the finance charge disclosed under paragraph (d) of this section.

(k) *Prepayment.* (1) When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full.

(2) When an obligation includes a finance charge other than the finance charge described in paragraph (k)(1) of this section, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full.

(l) *Late payment.* Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.

(m) *Security interest.* The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.

(n) *Insurance and debt cancellation.* The items required by § 226.4(d) in order to exclude certain insurance premiums and debt cancellation fees from the finance charge.

(o) *Certain security interest charges.* The disclosures required by § 226.4(e) in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.

(p) *Contract reference.* A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor's policy regarding assumption of the obligation.

(q) *Assumption policy.* In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.

(r) *Required deposit.* If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit.[45]

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981, as amended at 52 FR 48670, Dec. 24, 1987; 61 FR 49246, Sept. 19, 1996]

### § 226.19 Certain residential mortgage and variable-rate transactions.

(a) *Residential mortgage transactions subject to RESPA*—(1) *Time of disclosures.* In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) the creditor shall make good faith estimates of the disclosures required by § 226.18 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier.

(2) *Redisclosure required.* If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than ⅛ of 1 percentage point in a regular transaction or more than ¼ of 1

[44] In any transaction involving a single payment, the creditor need not disclose the total of payments.

[45] A required deposit need not include, for example: (1) An escrow account for items such as taxes, insurance or repairs; (2) a deposit that earns not less than 5 percent per year; or (3) payments under a Morris Plan.

percentage point in an irregular transaction, as defined in § 226.22, the creditor shall disclose all the changed terms no later than consummation or settlement.

(b) *Certain variable-rate transactions.*[45a] If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier:[45b]

(1) The booklet titled *Consumer Handbook on Adjustable Rate Mortgages* published by the Board and the Federal Home Loan Bank Board, or a suitable substitute.

(2) A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:

(i) The fact that the interest rate, payment, or term of the loan can change.

(ii) The index or formula used in making adjustments, and a source of information about the index or formula.

(iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(iv) A statement that the consumer should ask about the current margin value and current interest rate.

(v) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount.

(vi) The frequency of interest rate and payment changes.

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.

(viii) At the option of the creditor, either of the following:

(A) A historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program disclosure. The example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index movement during the period.

(B) The maximum interest rate and payment for a $10,000 loan originated at the initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan and a statement that the periodic payment may increase or decrease substantially depending on changes in the rate.

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on either:

(A) The most recent payment shown in the historical example in paragraph (b)(2)(viii)(A) of this section; or

(B) The initial interest rate used to calculate the maximum interest rate and payment in paragraph (b)(2)(viii)(B) of this section.

(x) The fact that the loan program contains a demand feature.

(xi) The type of information that will be provided in notices of adjustments and the timing of such notices.

---

[45a] Information provided in accordance with variable-rate regulations of other federal agencies may be substituted for the disclosures required by paragraph (b) of this section.

[45b] Disclosures may be delivered or placed in the mail not later than three business days following receipt of a consumer's application when the application reaches the creditor by telephone, or through an intermediary agent or broker.

(xii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

[52 FR 48670, Dec. 24, 1987; 53 FR 467, Jan. 7, 1988, as amended at 61 FR 49246, Sept. 19, 1996; 62 FR 63443, Dec. 1, 1997]

### § 226.20 Subsequent disclosure requirements.

(a) *Refinancings*. A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. The following shall not be treated as a refinancing:

(1) A renewal of a single payment obligation with no change in the original terms.

(2) A reduction in the annual percentage rate with a corresponding change in the payment schedule.

(3) An agreement involving a court proceeding.

(4) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in § 226.4(d).

(5) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart.

(b) *Assumptions*. An assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing residential mortgage transaction. Before the assumption occurs, the creditor shall make new disclosures to the subsequent consumer, based on the remaining obligation. If the finance charge originally imposed on the existing obligation was an add-on or discount finance charge, the creditor need only disclose:

(1) The unpaid balance of the obligation assumed.

(2) The total charges imposed by the creditor in connection with the assumption.

(3) The information required to be disclosed under § 226.18(k), (l), (m), and (n).

(4) The annual percentage rate originally imposed on the obligation.

(5) The payment schedule under § 226.18(g) and the total of payments under § 226.18(h) based on the remaining obligation.

(c) *Variable-rate adjustments*. [45c] An adjustment to the interest rate with or without a corresponding adjustment to the payment in a variable-rate transaction subject to § 226.19(b) is an event requiring new disclosures to the consumer. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120, calendar days before a payment at a new level is due, the following disclosures, as applicable, must be delivered or placed in the mail:

(1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the creditor has foregone any increase in the interest rate.

(4) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.

(5) The payment, if different from that referred to in paragraph (c)(4) of this section, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term.

[46 FR 20892, Apr. 7, 1981, as amended at 52 FR 48671, Dec. 24, 1987]

### § 226.21 Treatment of credit balances.

When a credit balance in excess of $1 is created in connection with a transaction (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of

[45c] Information provided in accordance with variable-rate subsequent disclosure regulations of other federal agencies may be substituted for the disclosure required by paragraph (c) of this section.

unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer), the creditor shall:

(a) Credit the amount of the credit balance to the consumer's account;

(b) Refund any part of the remaining credit balance, upon the written request of the consumer; and

(c) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than 6 months, except that no further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

### § 226.22 Determination of annual percentage rate.

(a) *Accuracy of annual percentage rate.* (1) The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in appendix J to this regulation.[45d]

(2) As a general rule, the annual percentage rate shall be considered accurate if it is not more than ⅛ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.

(3) In an irregular transaction, the annual percentage rate shall be considered accurate if it is not more than ¼ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.[46]

(4) *Mortgage loans.* If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate determined in accordance with paragraph (a)(1) of this section, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, the disclosed annual percentage rate shall also be considered accurate if:

(i) The rate results from the disclosed finance charge; and

(ii)(A) The disclosed finance charge would be considered accurate under § 226.18(d)(1); or

(B) For purposes of rescission, if the disclosed finance charge would be considered accurate under § 226.23(g) or (h), whichever applies.

(5) *Additional tolerance for mortgage loans.* In a transaction secured by real property or a dwelling, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, if the disclosed finance charge is calculated incorrectly but is considered accurate under § 226.18(d)(1) or § 226.23(g) or (h), the disclosed annual percentage rate shall be considered accurate:

(i) If the disclosed finance charge is understated, and the disclosed annual percentage rate is also understated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section;

(ii) If the disclosed finance charge is overstated, and the disclosed annual percentage rate is also overstated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section.

(b) *Computation tools.* (1) The Regulation Z Annual Percentage Rate Tables produced by the Board may be used to determine the annual percentage rate,

[45d] An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if: (1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes and notifies the Board in writing of the error in the calculation tool.

[46] For purposes of paragraph (a)(3) of this section, an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment).

and any rate determined from those tables in accordance with the accompanying instructions complies with the requirements of this section. Volume I of the tables applies to single advance transactions involving up to 480 monthly payments or 104 weekly payments. It may be used for regular transactions and for transactions with any of the following irregularities: an irregular first period, an irregular first payment, and an irregular final payment. Volume II of the tables applies to transactions involving multiple advances and any type of payment or period irregularity.

(2) Creditors may use any other computation tool in determining the annual percentage rate if the rate so determined equals the rate determined in accordance with appendix J, within the degree of accuracy set forth in paragraph (a) of this section.

(c) *Single add-on rate transactions.* If a single add-on rate is applied to all transactions with maturities up to 60 months and if all payments are equal in amount and period, a single annual percentage rate may be disclosed for all those transactions, so long as it is the highest annual percentage rate for any such transaction.

(d) *Certain transactions involving ranges of balances.* For purposes of disclosing the annual percentage rate referred to in §226.17(g)(4) (Mail or telephone orders—delay in disclosures) and (h) (Series of sales—delay in disclosures), if the same finance charge is imposed on all balances within a specified range of balances, the annual percentage rate computed for the median balance may be disclosed for all the balances. However, if the annual percentage rate computed for the median balance understates the annual percentage rate computed for the lowest balance by more than 8 percent of the latter rate, the annual percentage rate shall be computed on whatever lower balance will produce an annual percentage rate that does not result in an understatement of more than 8 percent of the rate determined on the lowest balance.

[46 FR 20892, Apr. 7, 1981, as amended at 47 FR 756, Jan. 7, 1982; 48 FR 14886, Apr. 6, 1983; 61 FR 49246, Sept. 19, 1996]

## § 226.23 Right of rescission.

(a) *Consumer's right to rescind.* (1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section.[47]

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures,[48] whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act.

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

[47] For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

[48] The term ''material disclosures'' means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total payments, the payment schedule, and the disclosures and limitations referred to in §226.32 (c) and (d).

(b)(1) *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered by electronic communication as provided in § 226.36(b)). The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(i) The retention or acquisition of a security interest in the consumer's principal dwelling.

(ii) The consumer's right to rescind the transaction.

(iii) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(iv) The effects of rescission, as described in paragraph (d) of this section.

(v) The date the rescission period expires.

(2) *Proper form of notice.* To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide the appropriate model form in Appendix H of this part or a substantially similar notice.

(c) *Delay of creditor's performance.* Unless a consumer waives the right of rescission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d) *Effects of rescission.* (1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d) (2) and (3) of this section may be modified by court order.

(e) *Consumer's waiver of right to rescind.* (1) The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited, except as provided in paragraph (e)(2) of this section.

(2) The need of the consumer to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1993, pursuant to 42 U.S.C. 5170, to be a major disaster area because of severe storms and flooding in the Midwest.[48a] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

(3) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1994 to be a major disaster

[48a] A list of the affected areas will be maintained by the Board.

area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in the South.[48b] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

(4) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during October 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in Texas.[48c] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

(f) *Exempt transactions.* The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. The right of rescission shall apply, however, to the extent the new amount financed exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing or consolidation.

(3) A transaction in which a state agency is a creditor.

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under § 226.17(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

(5) A renewal of optional insurance premiums that is not considered a refinancing under § 226.20(a)(5).

(g) *Tolerances for accuracy*—(1) *One-half of 1 percent tolerance.* Except as provided in paragraphs (g)(2) and (h)(2) of this section, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(i) is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or

(ii) is greater than the amount required to be disclosed.

(2) *One percent tolerance.* In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 226.32), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(i) is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(ii) is greater than the amount required to be disclosed.

(h) *Special rules for foreclosures*—(1) *Right to rescind.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the consumer shall have the right to rescind the transaction if:

(i) A mortgage broker fee that should have been included in the finance charge was not included; or

(ii) The creditor did not provide the properly completed appropriate model form in Appendix H of this part, or a substantially similar notice of rescission.

(2) *Tolerance for disclosures.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the

[48b] A list of the affected areas will be maintained and published by the Board. Such areas now include parts of Alabama, Florida, and Georgia.

[48c] A list of the affected areas will be maintained and published by the Board. Such areas now include the following counties in Texas: Angelina, Austin, Bastrop, Brazos, Brazoria, Burleson, Chambers, Fayette, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Lee, Liberty, Madison, Matagorda, Montgomery, Nacagdoches, Orange, Polk, San Augustine, San Jacinto, Shelby, Trinity, Victoria, Washington, Waller, Walker, and Wharton.

amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(i) is understated by no more than $35; or

(ii) is greater than the amount required to be disclosed.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 51 FR 45299, Dec. 18, 1986; 58 FR 40583, July 29, 1993; 59 FR 40204, Aug. 5, 1994; 59 FR 63715, Dec. 9, 1994; 60 FR 15471, Mar. 24, 1995; 61 FR 49247, Sept. 19, 1996; 66 FR 17338, Mar. 30, 2001]

### § 226.24 Advertising.

(a) *Actually available terms.* If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) *Advertisement of rate of finance charge.* If an advertisement states a rate of finance charge, it shall state the rate as an ''annual percentage rate,'' using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(c) *Advertisement of terms that require additional disclosures.* (1) If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (c)(2) of this section:

(i) The amount or percentage of any downpayment.

(ii) The number of payments or period of repayment.

(iii) The amount of any payment.

(iv) The amount of any finance charge.

(2) An advertisement stating any of the terms in paragraph (c)(1) of this section shall state the following terms,[49] as applicable:

(i) The amount or percentage of the downpayment.

(ii) The terms of repayment.

(iii) The *annual percentage rate,* using that term, and, if the rate may be increased after consummation, that fact.

(d) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an advertisement using electronic communication, gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (c)(2) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an advertisement using electronic communication complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 66 FR 17338, Mar. 30, 2001]

## Subpart D—Miscellaneous

### § 226.25 Record retention.

(a) *General rule.* A creditor shall retain evidence of compliance with this regulation (other than advertising requirements under §§ 226.16 and 226.24) for 2 years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing the regulation may require creditors under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 108 of the act.

(b) *Inspection of records.* A creditor shall permit the agency responsible for enforcing this regulation with respect to that creditor to inspect its relevant records for compliance.

[49] An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used.

### § 226.26 Use of annual percentage rate in oral disclosures.

(a) *Open-end credit.* In an oral response to a consumer's inquiry about the cost of open-end credit, only the annual percentage rate or rates shall be stated, except that the periodic rate or rates also may be stated. If the annual percentage rate cannot be determined in advance because there are finance charges other than a periodic rate, the corresponding annual percentage rate shall be stated, and other cost information may be given.

(b) *Closed-end credit.* In an oral response to a consumer's inquiry about the cost of closed-end credit, only the annual percentage rate shall be stated, except that a simple annual rate or periodic rate also may be stated if it is applied to an unpaid balance. If the annual percentage rate cannot be determined in advance, the annual percentage rate for a sample transaction shall be stated, and other cost information for the consumer's specific transaction may be given.

### § 226.27 Language of disclosures.

Disclosures required by this regulation may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request. This requirement for providing English disclosures on request does not apply to advertisements subject to §§ 226.16 and 226.24.

[66 FR 17339, Mar. 30, 2001]

### § 226.28 Effect on State laws.

(a) *Inconsistent disclosure requirements.* (1) Except as provided in paragraph (d) of this section, State law requirements that are inconsistent with the requirements contained in chapter 1 (General Provisions), chapter 2 (Credit Transactions), or chapter 3 (Credit Advertising) of the act and the implementing provisions of this regulation are preempted to the extent of the inconsistency. A State law is inconsistent if it requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. A State law is contradictory if it requires the use of the same term to represent a different amount or a different meaning than the Federal law, or if it requires the use of a term different from that required in the Federal law to describe the same item. A creditor, State, or other interested party may request the Board to determine whether a State law requirement is inconsistent. After the Board determines that a State law is inconsistent, a creditor may not make disclosures using the inconsistent term or form.

(2)(i) State law requirements are inconsistent with the requirements contained in sections 161 (Correction of billing errors) or 162 (Regulation of credit reports) of the Act and the implementing provisions of this regulation and are preempted if they provide rights, responsibilities, or procedures for consumers or creditors that are different from those required by the Federal law. However, a State law that allows a consumer to inquire about an open-end credit account and imposes on the creditor an obligation to respond to such inquiry after the time allowed in the Federal law for the consumer to submit written notice of a billing error shall not be preempted in any situation where the time period for making written notice under this regulation has expired. If a creditor gives written notice of a consumer's rights under such State law, the notice shall state that reliance on the longer time period available under State law may result in the loss of important rights that could be preserved by acting more promptly under Federal law; it shall also explain that the State law provisions apply only after expiration of the time period for submitting a proper written notice of a billing error under the Federal law. If the State disclosures are made on the same side of a page as the required Federal disclosures, the State disclosures shall appear under a demarcation line below the Federal disclosures, and the Federal disclosures shall be identified by a heading indicating that they are made in compliance with Federal law.

(ii) State law requirements are inconsistent with the requirements contained in chapter 4 (Credit billing) of the Act (other than section 161 or 162) and the implementing provisions of this regulation and are preempted if the creditor cannot comply with State law without violating Federal law.

(iii) A State may request the Board to determine whether its law is inconsistent with chapter 4 of the Act and its implementing provisions.

(b) *Equivalent disclosure requirements.* If the Board determines that a disclosure required by state law (other than a requirement relating to the finance charge, annual percentage rate, or the disclosures required under §226.32) is substantially the same in meaning as a disclosure required under the act or this regulation, creditors in that state may make the state disclosure in lieu of the federal disclosure. A creditor, State, or other interested party may request the Board to determine whether a State disclosure is substantially the same in meaning as a Federal disclosure.

(c) *Request for determination.* The procedures under which a request for a determination may be made under this section are set forth in appendix A.

(d) *Special rule for credit and charge cards.* State law requirements relating to the disclosure of credit information in any credit or charge card application or solicitation that is subject to the requirements of section 127(c) of chapter 2 of the act (§226.5a of the regulation) or in any renewal notice for a credit or charge card that is subject to the requirements of section 127(d) of chapter 2 of the act (§226.9(e) of the regulation) are preempted. State laws relating to the enforcement of section 127 (c) and (d) of the act are not preempted.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 54 FR 13867, Apr. 6, 1989; 54 FR 32954, Aug. 11, 1989; 60 FR 15471, Mar. 24, 1995]

### §226.29 State exemptions.

(a) *General rule.* Any State may apply to the Board to exempt a class of transactions within the State from the requirements of chapter 2 (Credit transactions) or chapter 4 (Credit billing) of the Act and the corresponding provisions of this regulation. The Board shall grant an exemption if it determines that:

(1) The State law is substantially similar to the Federal law or, in the case of chapter 4, affords the consumer greater protection than the Federal law; and

(2) There is adequate provision for enforcement.

(b) *Civil liability.* (1) No exemptions granted under this section shall extend to the civil liability provisions of sections 130 and 131 of the Act.

(2) If an exemption has been granted, the disclosures required by the applicable State law (except any additional requirements not imposed by Federal law) shall constitute the disclosures required by this Act.

(c) *Applications.* The procedures under which a State may apply for an exemption under this section are set forth in appendix B.

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]

### §226.30 Limitation on rates.

A creditor shall include in any consumer credit contract secured by a dwelling and subject to the act and this regulation the maximum interest rate that may be imposed during the term of the obligation[50] when:

(a) In the case of closed-end credit, the annual percentage rate may increase after consummation, or

(b) In the case of open-end credit, the annual percentage rate may increase during the plan.

[52 FR 43181, Nov. 9, 1987]

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

SOURCE: Reg. Z, 60 FR 15471, Mar. 24, 1995, unless otherwise noted.

### §226.31 General rules.

(a) *Relation to other subparts in this part.* The requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this part.

(b) *Form of disclosures*—(1) *General.* The creditor shall make the disclosures required by this subpart clearly and

[50] Compliance with this section will constitute compliance with the disclosure requirements on limitations on increases in footnote 12 to §§226.6(a)(2) and 226.18(f)(2) until October 1, 1988.

conspicuously in writing, in a form that the consumer may keep.

(2) *Electronic communication*. For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see § 226.36.

(c) *Timing of disclosure*—(1) *Disclosures for certain closed-end home mortgages*. The creditor shall furnish the disclosures required by § 226.32 at least three business days prior to consummation of a mortgage transaction covered by § 226.32.

(i) *Change in terms*. After complying with paragraph (c)(1) of this section and prior to consummation, if the creditor changes any term that makes the disclosures inaccurate, new disclosures shall be provided in accordance with the requirements of this subpart.

(ii) *Telephone disclosures*. A creditor may provide new disclosures by telephone if the consumer initiates the change and if, at consummation:

(A) The creditor provides new written disclosures; and

(B) The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days prior to consummation.

(iii) *Consumer's waiver of waiting period before consummation*. The consumer may, after receiving the disclosures required by paragraph (c)(1) of this section, modify or waive the three-day waiting period between delivery of those disclosures and consummation if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period. Printed forms for this purpose are prohibited, except when creditors are permitted to use printed forms pursuant to § 226.23(e)(2).

(2) *Disclosures for reverse mortgages*. The creditor shall furnish the disclosures required by § 226.33 at least three business days prior to:

(i) Consummation of a closed-end credit transaction; or

(ii) The first transaction under an open-end credit plan.

(d) *Basis of disclosures and use of estimates*—(1) *Legal Obligation*. Disclosures shall reflect the terms of the legal obligation between the parties.

(2) *Estimates*. If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

(3) *Per-diem interest*. For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared.

(e) *Multiple creditors; multiple consumers*. If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under § 226.15 or § 226.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(f) *Effect of subsequent events*. If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 226), although new disclosures may be required for mortgages covered by § 226.32 under paragraph (c) of this section, § 226.9(c), § 226.19, or § 226.20.

(g) *Accuracy of annual percentage rate*. For purposes of § 226.32, the annual percentage rate shall be considered accurate, and may be used in determining whether a transaction is covered by § 226.32, if it is accurate according to the requirements and within the tolerances under § 226.22. The finance charge tolerances for rescission under

§ 226.23(g) or (h) shall not apply for this purpose.

[Reg. Z, 60 FR 15471, Mar. 24, 1995, as amended at 60 FR 29969, June 7, 1995; 61 FR 49247, Sept. 19, 1996; 66 FR 17339, Mar. 30, 2001]

### § 226.32 Requirements for certain closed-end home mortgages.

(a) *Coverage.* (1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(i) The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(ii) The total points and fees payable by the consumer at or before loan closing will exceed the greater of 8 percent of the total loan amount, or $400; the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

(2) This section does not apply to the following:

(i) A residential mortgage transaction.

(ii) A reverse mortgage transaction subject to § 226.33.

(iii) An open-end credit plan subject to subpart B of this part.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) For purposes of paragraph (a)(1)(ii) of this section, *points and fees* means:

(i) All items required to be disclosed under § 226.4(a) and 226.4(b), except interest or the time-price differential;

(ii) All compensation paid to mortgage brokers;

(iii) All items listed in § 226.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and

(iv) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

(2) *Affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).

(c) *Disclosures.* In addition to other disclosures required by this part, in a mortgage subject to this section, the creditor shall disclose the following in conspicuous type size:

(1) *Notices.* The following statement: ''You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.''

(2) *Annual percentage rate.* The annual percentage rate.

(3) *Regular payment; balloon payment.* The amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(4) *Variable-rate.* For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under § 226.30.

(5) *Amount borrowed.* For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or

other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

(d) *Limitations.* A mortgage transaction subject to this section shall not include the following terms:

(1)(i) *Balloon payment.* For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

(ii) *Exception.* The limitations in paragraph (d)(1)(i) of this section do not apply to loans with maturities of less than one year, if the purpose of the loan is a ''bridge'' loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(2) *Negative amortization.* A payment schedule with regular periodic payments that cause the principal balance to increase.

(3) *Advance payments.* A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.

(4) *Increased interest rate.* An increase in the interest rate after default.

(5) *Rebates.* A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(6) *Prepayment penalties.* Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992.

(7) *Prepayment penalty exception.* A mortgage transaction subject to this section may provide for a prepayment penalty otherwise permitted by law (including a refund calculated according to the rule of 78s) if:

(i) The penalty can be exercised only for the first five years following consummation;

(ii) The source of the prepayment funds is not a refinancing by the creditor or an affiliate of the creditor; and

(iii) At consummation, the consumer's total monthly debts (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified by the consumer's signed financial statement, a credit report, and payment records for employment income.

(8) *Due-on-demand clause.* A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(i) There is fraud or material misrepresentation by the consumer in connection with the loan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(iii) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

[Reg. Z, 60 FR 15472, Mar. 24, 1995, as amended at 60 FR 29969, June 7, 1995; 66 FR 65617, Dec. 20, 2001]

### § 226.33 Requirements for reverse mortgages.

(a) *Definition.* For purposes of this subpart, *reverse mortgage transaction* means a nonrecourse consumer credit obligation in which:

(1) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the consumer's principal dwelling; and

(2) Any principal, interest, or shared appreciation or equity is due and payable (other than in the case of default) only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a principal dwelling.

(b) *Content of disclosures.* In addition to other disclosures required by this part, in a reverse mortgage transaction the creditor shall provide the following disclosures in a form substantially similar to the model form found in paragraph (d) of Appendix K of this part:

(1) *Notice.* A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosures required by this section or has signed an application for a reverse mortgage loan.

(2) *Total annual loan cost rates.* A good-faith projection of the total cost of the credit, determined in accordance with paragraph (c) of this section and expressed as a table of ''total annual loan cost rates,'' using that term, in accordance with Appendix K of this part.

(3) *Itemization of pertinent information.* An itemization of loan terms, charges, the age of the youngest borrower and the appraised property value.

(4) *Explanation of table.* An explanation of the table of total annual loan cost rates as provided in the model form found in paragraph (d) of Appendix K of this part.

(c) *Projected total cost of credit.* The projected total cost of credit shall reflect the following factors, as applicable:

(1) *Costs to consumer.* All costs and charges to the consumer, including the costs of any annuity the consumer purchases as part of the reverse mortgage transaction.

(2) *Payments to consumer.* All advances to and for the benefit of the consumer, including annuity payments that the consumer will receive from an annuity that the consumer purchases as part of the reverse mortgage transaction.

(3) *Additional creditor compensation.* Any shared appreciation or equity in the dwelling that the creditor is entitled by contract to receive.

(4) *Limitations on consumer liability.* Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements).

(5) *Assumed annual appreciation rates.* Each of the following assumed annual appreciation rates for the dwelling:

(i) 0 percent.

(ii) 4 percent.

(iii) 8 percent.

(6) *Assumed loan period.* (i) Each of the following assumed loan periods, as provided in Appendix L of this part:

(A) Two years.

(B) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of that consumer's most recent birthday). In the case of multiple consumers, the period shall be the actuarial life expectancy of the youngest consumer (as of that consumer's most recent birthday).

(C) The actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of 1.4 and rounded to the nearest full year.

(ii) At the creditor's option, the actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of .5 and rounded to the nearest full year.

### § 226.34 Prohibited acts or practices in connection with credit secured by a consumer's dwelling.

(a) *Prohibited acts or practices for loans subject to § 226.32.* A creditor extending mortgage credit subject to § 226.32 shall not—

(1) *Home improvement contracts.* Pay a contractor under a home improvement contract from the proceeds of a mortgage covered by § 226.32, other than:

(i) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

(ii) At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.

(2) *Notice to assignee.* Sell or otherwise assign a mortgage subject to § 226.32 without furnishing the following statement to the purchaser or assignee: ''Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor.''

(3) *Refinancings within one-year period.* Within one year of having extended credit subject to § 226.32, refinance any loan subject to § 226.32 to the same borrower into another loan subject to § 226.32, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of mortgage credit subject to § 226.32, shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any loan subject to § 226.32 to the same borrower into another loan subject to § 226.32, unless the refinancing is in the borrower's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.

(4) *Repayment ability.* Engage in a pattern or practice of extending credit subject to § 226.32 to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment. There is a presumption that a creditor has violated this paragraph (a)(4) if the creditor engages in a pattern or practice of making loans subject to § 226.32 without verifying and documenting consumers' repayment ability.

(b) *Prohibited acts or practices for dwelling-secured loans; open-end credit.* In connection with credit secured by the consumer's dwelling that does not meet the definition in § 226.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of § 226.32.

[Reg. Z, 66 FR 65618, Dec. 20, 2001]

### § 226.35 [Reserved]

## Subpart F—Electronic Communication

### § 226.36 Requirements for electronic communication.

(a) *Definition.* ''Electronic communication'' means a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules of this part, a creditor may provide by electronic communication any disclosure required by this part to be in writing.

(c) *When consent is required.* Under the E-Sign Act, a creditor is required to obtain a consumer's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under §§ 226.5a, 226.5b(d) and 226.5b(e), 226.16, 226.17(g)(1) through (5), 226.19(b) and 226.24 are deemed not to be related to a transaction.

(d) *Address or location to receive electronic communication.* A creditor that uses electronic communication to provide disclosures required by this part shall:

(1) Send the disclosure to the consumer's electronic address; or

(2) Make the disclosure available at another location such as an Internet web site; and

(i) Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the creditor's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

(3) *Exceptions.* A creditor need not comply with paragraphs (d)(2)(i) and (ii) of this section for the disclosures required under §§ 226.5a, 226.5b(d) and 226.5b(e), 226.16, 226.17(g)(1) through (5), 226.19(b) and 226.24.

(e) *Redelivery.* When a disclosure provided by electronic communication is returned to a creditor undelivered, the creditor shall take reasonable steps to attempt redelivery using information in its files.

(f) *Electronic signatures.* An electronic signature as defined under the E-Sign satisfies any requirement under this part for a consumer's signature or initials.

[Reg. Z, 66 FR 17339, Mar. 30, 2001]

## APPENDIX A TO PART 226—EFFECT ON STATE LAWS

### REQUEST FOR DETERMINATION

A request for a determination that a State law is inconsistent or that a State law is substantially the same as the Act and regulation shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall be made pursuant to the procedures herein and the Board's Rules of Procedure (12 CFR Part 262).

### SUPPORTING DOCUMENTS

A request for a determination shall include the following items:

(1) The text of the State statute, regulation, or other document that is the subject of the request.

(2) Any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies the relevant provision.

(3) A comparison of the State law with the corresponding provision of the Federal law, including a full discussion of the basis for the requesting party's belief that the State provision is either inconsistent or substantially the same.

(4) Any other information that the requesting party believes may assist the Board in its determination.

### PUBLIC NOTICE OF DETERMINATION

Notice that the Board intends to make a determination (either on request or on its own motion) will be published in the FEDERAL REGISTER, with an opportunity for public comment, unless the Board finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision.

Subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261), all requests made, including any documents and other material submitted in support of the requests, will be made available for public inspection and copying.

### NOTICE AFTER DETERMINATION

Notice of a final determination will be published in the FEDERAL REGISTER, and the Board will furnish a copy of such notice to the party who made the request and to the appropriate State official.

### *Reversal of Determination*

The Board reserves the right to reverse a determination for any reason bearing on the coverage or effect of State or Federal law.

Notice of reversal of a determination will be published in the FEDERAL REGISTER and a copy furnished to the appropriate State official.

[Reg. Z, 46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]

## APPENDIX B TO PART 226—STATE EXEMPTIONS

### APPLICATION

Any State may apply to the Board for a determination that a class of transactions subject to State law is exempt from the requirements of the Act and this regulation. An application shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, and shall be signed by the appropriate State official. The application shall be made pursuant to the procedures herein and the Board's Rules of Procedure (12 CFR Part 262).

### SUPPORTING DOCUMENTS

An application shall be accompanied by:

(1) The text of the State statute or regulation that is the subject of the application, and any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies it.

(2) A comparison of the State law with the corresponding provisions of the Federal law.

(3) The text of the State statute or regulation that provides for civil and criminal liability and administrative enforcement of the State law.

(4) A statement of the provisions for enforcement, including an identification of the State office that administers the relevant law, information on the funding and the number and qualifications of personnel engaged in enforcement, and a description of the enforcement procedures to be followed, including information on examination procedures, practices, and policies. If an exemption application extends to federally chartered institutions, the applicant must furnish evidence that arrangements have been made with the appropriate Federal agencies to ensure adequate enforcement of State law in regard to such creditors.

(5) A statement of reasons to support the applicant's claim that an exemption should be granted.

### PUBLIC NOTICE OF APPLICATION

Notice of an application will be published, with an opportunity for public comment, in the FEDERAL REGISTER, unless the Board finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision.

Subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261), all applications made, including any documents and other material submitted in support of the applications, will be made available for public inspection and copying. A copy of the application also will be made available at the Federal Reserve Bank of each district in which the applicant is situated.

FAVORABLE DETERMINATION

If the Board determines on the basis of the information before it that an exemption should be granted, notice of the exemption will be published in the FEDERAL REGISTER, and a copy furnished to the applicant and to each Federal official responsible for administrative enforcement.

The appropriate State official shall inform the Board within 30 days of any change in its relevant law or regulations. The official shall file with the Board such periodic reports as the Board may require.

The Board will inform the appropriate State official of any subsequent amendments to the Federal law, regulation, interpretations, or enforcement policies that might require an amendment to State law, regulation, interpretations, or enforcement procedures.

ADVERSE DETERMINATION

If the Board makes an initial determination that an exemption should not be granted, the Board will afford the applicant a reasonable opportunity to demonstrate further that an exemption is proper. If the Board ultimately finds that an exemption should not be granted, notice of an adverse determination will be published in the FEDERAL REGISTER and a copy furnished to the applicant.

REVOCATION OF EXEMPTION

The Board reserves the right to revoke an exemption if at any time it determines that the standards required for an exemption are not met.

Before taking such action, the Board will notify the appropriate State official of its intent, and will afford the official such opportunity as it deems appropriate in the circumstances to demonstrate that revocation is improper. If the Board ultimately finds that revocation is proper, notice of the Board's intention to revoke such exemption will be published in the FEDERAL REGISTER with a reasonable period of time for interested persons to comment.

Notice of revocation of an exemption will be published in the FEDERAL REGISTER. A copy of such notice will be furnished to the appropriate State official and to the Federal officials responsible for enforcement. Upon revocation of an exemption, creditors in that State shall then be subject to the requirements of the Federal law.

## APPENDIX C TO PART 226—ISSUANCE OF STAFF INTERPRETATIONS

OFFICIAL STAFF INTERPRETATIONS

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulation. These interpretations provide the protection afforded under section 130(f) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation which will be amended periodically.

REQUESTS FOR ISSUANCE OF OFFICIAL STAFF INTERPRETATIONS

A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

SCOPE OF INTERPRETATIONS

No staff interpretations will be issued approving creditors' forms, statements, or calculation tools or methods. This restriction does not apply to forms, statements, tools, or methods whose use is required or sanctioned by a government agency.

## APPENDIX D TO PART 226—MULTIPLE ADVANCE CONSTRUCTION LOANS

Section 226.17(c)(6) permits creditors to treat multiple advance loans to finance construction of a dwelling that may be permanently financed by the same creditor either as a single transaction or as more than one transaction. If the actual schedule of advances is not known, the following methods may be used to estimate the interest portion of the finance charge and the annual percentage rate and to make disclosures. If the creditor chooses to disclose the construction phase separately, whether interest is payable periodically or at the end of construction, part I may be used. If the creditor chooses to disclose the construction and the permanent financing as one transaction, part II may be used.

*Part I—Construction Period Disclosed Separately*

A. If interest is payable only on the amount actually advanced for the time it is outstanding:

1. Estimated interest—Assume that one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period.

2. Estimated annual percentage rate—Assume a single payment loan that matures at the end of the construction period. The finance charge is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule—The number and amounts of any interest payments may be omitted in disclosing the payment schedule under § 226.18(g). The fact that interest payments are required and the timing of such payments shall be disclosed.

4. Amount financed—The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

B. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement:

1. Estimated interest—Assume that the entire commitment amount is outstanding at the contract interest rate for the entire construction period.

2. Estimated annual percentage rate—Assume a single payment loan that matures at the end of the construction period. The finance charge is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule—Interest payments shall be disclosed in making the repayment schedule disclosure under § 226.18(g).

4. Amount financed - The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

Example:

Assume a $50,000 loan commitment at 10.5% interest with a 5-month construction period and a prepaid finance charge of 2 points.

| | (A) | | (B) |
|---|---|---|---|
| Estimated Interest: | | | |
| $\$25{,}000 \times .105 \div 12 \times 5 = \$1{,}093.75$ | | $\$50{,}000 \times .105 \div 12 \times 5 = \$2{,}187.50$ | |
| Estimated APR: | | | |
| $\dfrac{(1{,}093.75 + 1{,}000) \times 100}{(25{,}000 - 1{,}000)} \div 5 \times 12 =$ | 20.94% | $\dfrac{(2{,}187.50 + 1{,}000) \times 100}{(25{,}000 - 1{,}000)} \div 5 \times 12 =$ | 31.88% |
| Disclosures: | | | |
| Amount financed | $49,000.00 | | $49,000.00 |
| Prepaid finance charge | 1,000.00 | | 1,000.00 |
| FINANCE CHARGE (Estimate) | 2,093.75 | | 3,187.50 |
| ANNUAL PERCENTAGE RATE (Estimate) | 20.94% | | 31.88% |
| Repayment: One payment of principal of $50,000 on 12-12-80. Interest on the amount of credit outstanding will be paid monthly. | | 4 monthly payments of $437.50, beginning 8-12-80, and a final payment of $50,437.50 on 12-12-80. | |
| Total of payments (Estimate) | $51,093.75 | | $52,187.50 |

Part II - Construction and permanent financing disclosed as one transaction.

A. The creditor shall estimate the interest payable during the construction period to be included in the total finance charge as follows:

1. If interest is payable only on the amount actually advanced for the time it is outstanding, assume that one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period.

2. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement, assume that the entire commitment amount is outstanding at the contract rate for the entire construction period.

B. The creditor shall compute the estimated annual percentage rate as follows:

1. Estimated interest payable during the construction period shall be treated for computation purposes as a prepaid finance charge (although it shall not be treated as a prepaid finance charge for disclosure purposes).

2. The number of payments shall not include any payments of interest only that are made during the construction period.

3. The first payment period shall consist of one-half of the construction period plus the period between the end of the construction period and the first amortization payment.

C. The creditor shall disclose the repayment schedule as follows:

1. For loans under paragraph A.1. of Part II, without reflecting the number or amounts of payments of interest only that are made during the construction period. The fact that interest payments must be made and the timing of such payments shall be disclosed.

2. For loans under paragraph A.2. of Part II, including any payments of interest only that are made during the construction period.

D. The creditor shall disclose the amount financed as the entire commitment amount less any prepaid finance charge.

Example:

Assume a $50,000 loan commitment at 10.5% interest with a 5-month construction period and a prepaid finance charge of 2 points, followed by 30-year permanent financing at the same rate with monthly amortization payments of $457.37.

Computation of Estimated APR

| | | Interest on Amount Advanced | Interest on Entire Commitment | |
|---|---|---|---|---|
| Estimated construction interest: | | | | |
| $25,000 x .105 ÷ 12 x 5 | = | $1,093.75 | $50,000 x .105 ÷ 12 x 5 = $2,187.50 | |
| Estimated total finance charge: | | | | |
| 360 x $457.37 = | $164,653.20 | | $164,653.20 | |
| Principal | - 50,000.00 | | - 50,000.00 | |
| Interest on Permanent Fin. | 114,653.20 | | 114,653.20 | |
| Construction Interest | + 1,093.75 | | + 2,187.50 | |
| Points | + 1,000.00 | $116,746.95 | + 1,000.00 | $117,840.70 |

| | | | | |
|---|---|---|---|---|
| Estimated amount financed: | | | | |
| Principal | $ 50,000.00 | | $ 50,000.00 | |
| Construction Interest | - 1,093.75 | | - 2,187.50 | |
| Points | - 1,000.00 | $ 47,906.25 | - 1,000.00 | $ 46,812.50 |
| Number of payments | | 360 | | 360 |
| Payment amount | | $ 457.37 | | $ 457.37 |
| First payment period | (5 + 2) + 1 | 3 1/2 months | (5 + 2) + 1 | 3 1/2 months |
| Estimated APR (Actuarial) | | 10.75% | | 11.03% |
| Estimated APR (Volume I): | | | | |
| | $\frac{11,674,695}{47,906.25}$ = 243.70 = FC/$100 | | $\frac{11,784,070}{46,812.50}$ = 251.73 = FC/$100 | |
| | First period adjustment = 3 mo., 15 days = +5.0 | | First period adjustment = 3 mo., 15 days = +5.0 | |
| | Using 365 payment line, the figure closest to 243.70 is 247.00, which corresponds to an APR of | 11% | Using 365 payment line, the figure closest to 251.73 is 253.93, which corresponds to an APR of | 11.25% |

**Disclosures**

| | | |
|---|---|---|
| Amount financed | $ 49,000.00 | $ 49,000.00 |
| Prepaid finance charge | 1,000.00 | 1,000.00 |
| FINANCE CHARGE (Estimate) | 116,746.95 | 117,840.70 |
| ANNUAL PERCENTAGE RATE (Estimate) | 11% | 11.25% |
| Repayment: | Interest on the amount of credit outstanding during the construction period will be paid monthly, followed by 360 monthly payments of $457.37, beginning 1-12-81. | 5 monthly payments of $437.50 beginning 8-12-80, followed by 360 monthly payments of $457.37 beginning 1-12-81. |
| Total of payments (Estimate) | $165,746.95 | $166,840.70 |

**[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]**

## Appendix E to Part 226—Rules For Card Issuers That Bill on a Transaction-By-Transaction Basis

The following provisions of Subpart B apply if credit cards are issued and (1) the card issuer and the seller are the same or related persons; (2) no finance charge is imposed; (3) consumers are billed in full for each use of the card on a transaction-by-transaction basis, by means of an invoice or other statement reflecting each use of the card; and (4) no cumulative account is maintained which reflects the transactions by each consumer during a period of time, such as a month:

*Section 226.6(d), and, as applicable, §226.6(b) and (c).* The disclosure required by §226.6(b) shall be limited to those charges that are or may be imposed as a result of the deferral of payment by use of the card, such as late payment or delinquency charges.

*Section 226.7(b) and §226.7(k).* Creditors may comply by placing the required disclosures on the invoice or statement sent to the consumer for each transaction.

*Section 226.9(a).* Creditors may comply by mailing or delivering the statement required by §226.6(d) (See appendix G–3) to each consumer receiving a transaction invoice during a one-month period chosen by the card issuer or by sending either the statement prescribed by §226.6(d) or an alternative billing error rights statement substantially similar to that in appendix G–4, with each invoice sent to a consumer.

*Section 226.9(c).*

*Section 226.10.*

*Section 226.11.* This section applies when a card issuer receives a payment or other credit that exceeds by more than $1 the amount due, as shown on the transaction invoice. The requirement to credit amounts to an account may be complied with by other reasonable means, such as by a credit memorandum. Since no periodic statement is provided, a notice of the credit balance shall be sent to the consumer within a reasonable period of time following its occurrence unless a refund of the credit balance is mailed or delivered to the consumer within 7 business days of its receipt by the card issuer.

*Section 226.12 including §226.12(c) and (d), as applicable.* Section 226.12(e) is inapplicable.

*Section 226.13, as applicable.* All references to *periodic statement* shall be read to indicate the invoice or other statement for the relevant transaction. All actions with regard to correcting and adjusting a consumer's account may be taken by issuing a refund or a new invoice, or by other appropriate means consistent with the purposes of the section.

*Section 226.15, as applicable.*

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 46 FR 60190, Dec. 9, 1981]

## APPENDIX F TO PART 226—ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CERTAIN OPEN-END CREDIT PLANS

In determining the denominator of the fraction under §226.14(c)(3), no amount will be used more than once when adding the sum of the balances[1] subject to periodic rates to the sum of the amounts subject to specific transaction charges. In every case, the full amount of transactions subject to specific transaction charges shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance subject to a periodic rate, as illustrated in the following examples of accounts on monthly billing cycles:

1. PREVIOUS BALANCE—NONE.

A specific transaction of $100 occurs on the first day of the billing cycle. The average daily balance is $100. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4½%) multiplied by 12 (the number of months in a year), i.e., 54%.

2. Previous balance—$100.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of the finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transaction (such excess in this case is $50), totaling $150. As explained in example 1, the annual percentage rate is 3½% × 12 = 42%.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100, plus the balance subject only to the periodic rate, the $100 previous balance). As explained in example 1, the annual percentage rate is 2¼% × 12 = 27%.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the consumer made a payment of $50 at the midpoint of the billing cycle, the numerator is $3.75 and the denominator is $150 (the amount of the transaction, $100, plus the balance subject to the periodic rate, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2½% × 12 = 30%.

5. Previous balance—$100.

A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1½% applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1⅔% × 12 = 20%.

6. Previous balance—none.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3% of the transaction amount or

[1] Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase *sum of the balances* shall also mean the *average of daily balances.*

\$3.00. The periodic rate is 1½% per month applied to the average daily balance. The numerator is the amount of the finance charge, which is \$3.75, including the \$3.00 transaction charge and \$.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction (\$100) plus the amount by which the balance subject to the periodic rate exceeds the amount of the transaction (\$0). Where the specific transaction amount exceeds the balance subject to the periodic rate, the resulting number is considered to be zero rather than a negative number (\$50 − \$100 = − \$50). The denominator, in this case, is \$100. As explained in example 1, the annual percentage rate is 3¾% × 12 = 45%.

## APPENDIX G TO PART 226—OPEN-END MODEL FORMS AND CLAUSES

G–1 Balance-Computation Methods Model Clauses (§§ 226.6 and 226.7)
G–2 Liability for Unauthorized Use Model Clause (§ 226.12)
G–3 Long-Form Billing-Error Rights Model Form (§§ 226.6 and 226.9)
G–4 Alternative Billing-Error Rights Model Form (§ 226.9)
G–5 Rescission Model Form (When Opening an Account) (§ 226.15)
G–6 Rescission Model Form (For Each Transaction) (§ 226.15)
G–7 Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)
G–8 Rescission Model Form (When Adding a Security Interest) (§ 226.15)
G–9 Rescission Model Form (When Increasing the Security) (§ 226.15)
G–10(A) Applications and Solicitations Model Forms (Credit Cards) (§ 226.5a(b))
G–10(B) Applications and Solicitations Sample (Credit Card) (§ 226.5a(b))
G–10(C) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))
G–11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))
G–12 Charge Card Model Clause (When Access to Plan Offered by Another) (§ 226.5a(f))
G–13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))
G–13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))
G–14A Home Equity Sample
G–14B Home Equity Sample
G–15 Home Equity Model Clauses

## G-1 -- Balance Computation Methods Model Clauses

### (a) Adjusted balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the "adjusted balance" of your account. We get the "adjusted balance" by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid finance charges and] any payments and credits received during the present billing cycle.

### (b) Previous balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle [minus any unpaid finance charges.] We do not subtract any payments or credits received during the billing cycle. [The amount of payments and credits to your account this billing cycle was $_____.]

### (c) Average daily balance method (excluding current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the "average daily balance" of your account (excluding current transactions). To get the "average daily balance" we take the beginning balance of your account each day and subtract any payments or credits [and any unpaid finance charges]. We do not add in any new [purchases/advances/loans]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

### (d) Average daily balance method (including current transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the "average daily balance" of your account (including current transactions). To get the "average daily balance" we take the beginning balance of your account each day, add any new [purchases/advances/loans], and subtract any payments or credits, [and unpaid finance charges]. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

### (e) Ending balance method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the end of each cycle (including new purchases and deducting payments and credits made during the billing cycle).

## G-2 -- Liability for Unauthorized Use Model Clause

You may be liable for the unauthorized use of your credit card [or other term that describes the credit card.] You will not be liable for unauthorized use that occurs after you notify [name of card issuer or its designee] at [address], orally or in writing, of the loss, theft, or possible unauthorized use. In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder.]

## G-3—Long Form Billing Error Rights Model Form

YOUR BILLING RIGHTS
KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

**Notify Us In Case of Errors or Questions About Your Bill**

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address listed on your bill]. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

**Your Rights and Our Responsibilities After We Receive Your Written Notice**

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

**Special Rule for Credit Card Purchases**

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

(a) You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current mailing address; and
(b) The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

## G-4—Alternative Billing Error Rights Model Form

BILLING RIGHTS SUMMARY

**In Case of Errors or Questions About Your Bill**

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address shown on your bill] as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

**Special Rule for Credit Card Purchases**

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than $50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

## G-5—Rescission Model Form (When Opening An Account)

NOTICE OF RIGHT TO CANCEL

**1. Your Right to Cancel.**
We have agreed to establish an open-end credit account for you, and you have agreed to give us a [mortgage/lien/security interest] [on/in] your home as security for the account. You have a legal right under federal law to cancel the account, without cost, within three business days after the latest of the following events:

(1) the opening date of your account which is

______________________________; or

(2) the date you received your Truth-in-Lending disclosures; or

(3) the date you received this notice of your right to cancel the account.

If you cancel the account, the [mortgage/lien/security interest] [on/in] your home is also cancelled. Within 20 days of receiving your notice, we must take the necessary steps to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must return to you any money or property you have given to us or to anyone else in connection with the account.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

**2. How to Cancel.**
If you decide to cancel the account, you may do so by notifying us, in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no

later than midnight of (date)
(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

______________________________ ____________
Consumer's Signature Date

## G-6—Rescission Model Form (For Each Transaction)

NOTICE OF RIGHT TO CANCEL

**1. Your Right to Cancel.**
We have extended credit to you under your open-end credit account. This extension of credit will increase the amount you owe on your account. We already have a [mortgage/lien/security interest] [on/in] your home as security for your account. You have a legal right under federal law to cancel the extension of credit, without cost, within three business days after the latest of the following events:

(1) the date of the additional extension of credit which is

____________________; or

(2) the date you received your Truth-in-Lending disclosures; or
(3) the date you received this notice of your right to cancel the additional extension of credit.

If you cancel the additional extension of credit, your cancellation will only apply to the additional amount and to any increase in the [mortgage/lien/security interest] that resulted because of the additional amount. It will not affect the amount you presently owe, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect the fact that any increase in the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this extension of credit.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

**2. How to Cancel.**
If you decide to cancel the additional extension of credit, you may do so by notifying us, in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no

later than midnight of (date)
(or midnight of the third business day following the latest of the **three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.**

I WISH TO CANCEL.

____________________ __________
Consumer's Signature Date

## G-7—Rescission Model Form (When Increasing the Credit Limit)

NOTICE OF RIGHT TO CANCEL

**1. Your Right to Cancel.**
We have agreed to increase the credit limit on your open-end credit account. We have a [mortgage/lien/security interest] [on/in] your home as security for your account. Increasing the credit limit will increase the amount of the [mortgage/lien/security interest] [on/in] your home. You have a legal right under federal law to cancel the increase in your credit limit, without cost, within three business days after the latest of the following events:

(1) the date of the increase in your credit limit which is

______________________ ; or

(2) the date you received your Truth-in-Lending disclosures; or
(3) the date you received this notice of your right to cancel the increase in your credit limit.

If you cancel, your cancellation will apply only to the increase in your credit limit and to the [mortgage/lien/security interest] that resulted from the increase in your credit limit. It will not affect the amount you presently owe, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect the fact that any increase in the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this increase.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

**2. How to Cancel.**
If you decide to cancel the increase in your credit limit, you may do so by notifying us, in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no

later than midnight of (date)
(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

______________________ ____________

Consumer's Signature Date

## G-8—Rescission Model Form (When Adding a Security Interest)

NOTICE OF RIGHT TO CANCEL

**1. Your Right to Cancel.**

You have agreed to give us a [mortgage/lien/security interest] [on/in] your home as security for your existing open-end credit account. You have a legal right under federal law to cancel the [mortgage/lien/security interest], without cost, within three business days after the latest of the following events:

(1) the date of the [mortgage/lien/security interest]

which is ______________________; or

(2) the date you received your Truth-in-Lending disclosures; or

(3) the date you received this notice of your right to cancel the [mortgage/lien/security interest].

If you cancel the [mortgage/lien/security interest], your cancellation will apply only to the [mortgage/lien/security interest]. It will not affect the amount you owe on your account. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect that any [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this increase.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may make the offer at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

**2. How to Cancel.**

If you decide to cancel the [mortgage/lien/security interest], you may do so by notifying us, in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no

later than midnight of (date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

______________________________ ____________

Consumer's Signature Date

## G-9—Rescission Model Form (When Increasing the Security)

NOTICE OF RIGHT TO CANCEL

**1. Your Right to Cancel.**
You have agreed to increase the amount of the [mortgage/lien/security interest] [on/in] your home that we hold as security for your open-end credit account. You have a legal right under federal law to cancel the increase, without cost, within three business days after the latest of the following events:

(1) the date of the increase in the security which is

______________________ ; or

(2) the date you received your Truth-in-Lending disclosures; or
(3) the date you received this notice of your right to cancel the increase in the security.

If you cancel the increase in the security, your cancellation will apply only to the increase in the amount of the [mortgage/lien/security interest]. It will not affect the amount you presently owe on your account, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect that any increase in the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this increase.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

**2. How to Cancel.**
If you decide to cancel the increase in security, you may do so by notifying us, in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no

later than midnight of (date)
(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

______________________ ______________

Consumer's Signature Date

G–10(A)—Applications and Solicitations Model Form (Credit Cards)

| | |
|---|---|
| **Annual percentage rate (APR) for purchases** | _________% until (expiration date),<br>after that, _________ % |
| **Other APRs** | Balance transfer APR: _______%<br>Cash advance APR: ________%<br>Penalty APR: _________ % See explanation below* |
| **Variable-rate information** | Your APR may vary.<br>The rate for [purchases] [cash advances][balance transfers] is determined by (explanation). See explanation below** |
| **Grace period for repayment of balances for purchases** | [ __ days] [until ____ ] [not less than __ days] [between __ and __days] [ __ days on average]<br><br>[You have no grace period in which to repay your balance for purchases before a finance charge will be imposed.] |
| **Method of computing the balance for purchases** | |
| **Annual fees** | [Annual] [Membership] fee: $ ______ per year]<br><br>[(type of fee): $ ______ per year]<br>[(type of fee): $ ____________ ] |
| **Minimum finance charge** | $ ________ |
| **Transaction fee for purchases** | [$ ________ ] [ _____ % of _____ ] |

**Transaction fee for cash advances**: [$ ____ ] [ __ % of ____ ]
**Balance transfer fee:** [ $____] [ ___% of ____]
**Late-payment fee**: [$ ____ ] [ ___ % of ____ ]
**Over-the-credit-limit fee**: $ ___

* Explanation of penalty.
**Explanation of variable rate.

G–10(B)—Applications and Solicitations Sample (Credit Cards)

| | |
|---|---|
| **Annual percentage rate (APR) for purchases** | 2.9% until 11/1/00, after that, 14.9% |
| **Other APRs** | Cash advance APR: 15.9%<br>Balance transfer APR: 15.9%<br>Penalty rate: 23.9%. See explanation below.* |
| **Variable-rate information** | Your APR for purchase transactions may vary. The rate is determined monthly by adding 5.9% to the Prime Rate** |
| **Grace period for repayment of balances for purchases** | 25 days on average |
| **Method of computing the balance for purchases** | Average daily balance (excluding new purchases) |
| **Annual fees** | None |
| **Minimum finance charge** | $ .50 |
| **Transaction fee for cash advances**: 3% of the amount advanced<br>**Balance transfer fee:** 3% of the amount transferred<br>**Late-payment fee**: $ 25<br>**Over-the-credit-limit fee**: $ 25 | |

* Explanation of penalty.

** The Prime Rate used to determine your APR is the rate published in ________ on the ___ day of the prior month.

G-10(C) -- Applications and Solicitations Model Form (Charge Cards)

| Annual fees | Transaction fee for purchases | Transaction fee for cash advances, and fees for paying late or exceeding the credit limit |
|---|---|---|
| [Annual fee: $____ per year]<br>[Membership fee: $____ per year]<br>[(*type of fee*): $____ per year]<br>[(*type of fee*): $____] | [$____]<br>[__% of ____] | Transaction fee for cash advances: [$____] [__% of ____]<br>Late payment fee: [$____] [__% of ____]<br>Over-the-credit-limit fee: $____ |
| All charges made on this charge card are due and payable when you receive your periodic statement. | | |

## G-11 -- Applications and Solicitations Made Available to General Public Model Clauses

(a) Disclosure of Required Credit Information

The information about the costs of the card described in this [application] [solicitation] is accurate as of (*month year*). This information may have changed after that date. To find out what may have changed, [call us at (*telephone number*)] [write to us at (*address*)].

(b) Disclosure With Account Opening Statement

To find out about changes in the information in this [application] [solicitation], [call us at (*telephone number*)] [write to us at (*address*)].

(c) No Disclosure of Credit Information

There are costs associated with the use of this card. To obtain information about these costs, call us at (*telephone number*) or write to us at (*address*).

## G-12 -- Charge Card Model Clause (When Access to Plan Offered by Another)

This charge card may allow you to access credit offered by another creditor. Our decision about issuing you a charge card will be independent of the other creditor's decision about allowing you access to a line of credit. Therefore, approval by us to issue you a card does not constitute approval by the other creditor to grant you credit privileges. If we issue you a charge card, you may receive it before the other creditor decides whether or not to grant you credit privileges.

## G-13(A) -- Change in Insurance Provider Model Form (Combined Notice)

The credit card account you have with us is insured. This is to notify you that we plan to replace your current coverage with insurance coverage from a different insurer.

If we obtain insurance for your account from a different insurer, you may cancel the insurance.

[Your premium rate will increase to $__ per __.]

[Your coverage will be affected by the following:

- [ ] The elimination of a type of coverage previously provided to you. [(*explanation*)] [See __ of the attached policy for details.]
- [ ] A lowering of the age at which your coverage will terminate or will become more restrictive. [(*explanation*)] [See __ of the attached policy or certificate for details.]
- [ ] A decrease in your maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or any other decrease in the dollar amount of your coverage or benefits. [(*explanation*)] [See __ of the attached policy or certificate for details.]
- [ ] A restriction on the eligibility for benefits for you or others. [(*explanation*)] [See __ of the attached policy or certificate for details.]
- [ ] A restriction in the definition of "disability" or other key term of coverage. [(*explanation*)] [See __ of the attached policy or certificate for details.]
- [ ] The addition of exclusions or limitations that are broader or other than those under the current coverage. [(*explanation*)] [See __ of the attached policy or certificate for details.]
- [ ] An increase in the elimination (waiting) period or a change to nonretroactive coverage. [(*explanation*)] [See __ of the attached policy or certificate for details).]]

[The name and mailing address of the new insurer providing the coverage for your account is (*name and address*).]

## G-13(B) -- Change in Insurance Provider Model Form

We have changed the insurer providing the coverage for your account. The new insurer's name and address are (*name and address*). A copy of the new policy or certificate is attached.

You may cancel the insurance for your account.

**G-14A -- Home Equity Sample**

## IMPORTANT TERMS of our HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

**Availability of Terms:** To obtain the terms described below, you must submit your application before January 1, 1990.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you have paid to us or anyone else in connection with your application.

**Security Interest:** We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

**Possible Actions:** Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees; (2) refuse to make additional extensions of credit; and (3) reduce your credit limit.

If you ask, we will give you more specific information concerning when we can take these actions.

**Minimum Payment Requirements:** You can obtain advances of credit for 10 years (the "draw period"). During the draw period, payments will be due monthly. Your minimum monthly payment will equal the greater of $100 or 1/360th of the outstanding balance plus the finance charges that have accrued on the outstanding balance.

After the draw period ends, you will no longer be able to obtain credit advances and must pay the outstanding balance over 5 years (the "repayment period"). During the repayment period, payments will be due monthly. Your minimum monthly payment will equal 1/60th of the balance that was outstanding at the end of the draw period plus the finance charges that have accrued on the remaining balance.

**Minimum Payment Example:** If you made only the minimum monthly payments and took no other credit advances, it would take 15 years to pay off a credit advance of $10,000 at an ANNUAL PERCENTAGE RATE of 12%. During that period, you would make 120 monthly payments varying between $127.78 and $100.00 followed by 60 monthly payments varying between $187.06 and $118.08.

**Fees and Charges:** To open and maintain a line of credit, you must pay the following fees to us:

- Application fee: $150 (due at application)
- Points: 1% of credit limit (due when account opened)
- Annual maintenance fee: $75 (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between $500 and $900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

**Minimum Draw and Balance Requirements:** The minimum credit advance you can receive is $500. You must maintain an outstanding balance of at least $100.

**Tax Deductibility:** You should consult a tax advisor regarding the deductibility of interest and charges for the line.

**Variable-Rate Information:** The line has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the monthly average prime rate charged by banks and is published in the *Federal Reserve Bulletin*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we will send you.

**Rate Changes:** The annual percentage rate can change each month. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Except for this 18% "cap," there is no limit on the amount by which the rate can change during any one-year period.

**Maximum Rate and Payment Examples:** If you had an outstanding balance of $10,000 during the draw period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $177.78. This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of $10,000 at the beginning of the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $316.67. This annual percentage rate could be reached during the first month of the repayment period.

**Historical Example:** The following table shows how the annual percentage rate and the minimum monthly payments for a single $10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from September of each year. While only one payment amount per year is shown, payments would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payments were made each month, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

| Year | Index (%) | Margin * (%) | | ANNUAL PERCENTAGE RATE (%) | Minimum Monthly Payment ($) |
|---|---|---|---|---|---|
| 1974 | 12.00 | 2 | | 14.00 | 144.44 |
| 1975 | 7.88 | 2 | | 9.88 | 106.50 |
| 1976 | 7.00 | 2 | | 9.00 | 100.00 |
| 1977 | 7.13 | 2 | | 9.13 | 100.00 |
| 1978 | 9.41 | 2 | *Draw Period* | 11.41 | 105.47 |
| 1979 | 12.90 | 2 | | 14.90 | 126.16 |
| 1980 | 12.23 | 2 | | 14.23 | 117.53 |
| 1981 | 20.08 | 2 | | 18.00 ** | 138.07 |
| 1982 | 13.50 | 2 | | 15.50 | 117.89 |
| 1983 | 11.00 | 2 | | 13.00 | 100.00 |
| 1984 | 12.97 | 2 | | 14.97 | 203.81 |
| 1985 | 9.50 | 2 | | 11.50 | 170.18 |
| 1986 | 7.50 | 2 | *Repayment Period* | 9.50 | 149.78 |
| 1987 | 8.70 | 2 | | 10.70 | 141.50 |
| 1988 | 10.00 | 2 | | 12.00 | 130.55 |

* This is a margin we have used recently.
** This rate reflects the 18% rate cap.

**G-14B -- Home Equity Sample**

## IMPORTANT TERMS
## of Our
## HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

**Availability of Terms:** All of the terms described below are subject to change.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

**Security Interest:** We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

**Possible Actions:** We can terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees if:

· You engage in fraud or material misrepresentation in connection with the line.

· You do not meet the repayment terms.

· Your action or inaction adversely affects the collateral or our rights in the collateral.

We can refuse to make additional extensions of credit or reduce your credit limit if:

· The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.

· We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.

· You are in default of a material obligation in the agreement.

· Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.

· A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.

· The maximum annual percentage rate is reached.

The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.

**Minimum Payment Requirements:** You can obtain advances of credit for 10 years (the "draw period"). You can choose one of three payment options for the draw period:

· *Monthly interest-only payments.* Under this option, your payments will be due monthly and will equal the finance charges that accrued on the outstanding balance during the preceding month.

· *Quarterly interest-only payments.* Under this option, your payments will be due quarterly and will equal the finance charges that accrued on the outstanding balance during the preceding quarter.

· *2% of the balance.* Under this option, your payments will be due monthly and will equal 2% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance during the preceding month.

If the payment determined under any option is less than $50, the minimum payment will equal $50 or the outstanding balance on your line, whichever is less.

Under both the monthly and quarterly interest-only payment options, the minimum payment will not reduce the principal that is outstanding on your line.

After the draw period ends, you will no longer be able to obtain credit advances and must repay the outstanding balance (the "repayment period"). The length of the repayment period will depend on the balance outstanding at the beginning of it. During the repayment period, payments will be due monthly and will equal 3% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance or $50, whichever is greater.

**Minimum Payment Examples:** If you took a single $10,000 advance and the ANNUAL PERCENTAGE RATE was 9.52%:

- Under the monthly interest-only payment option, it would take 18 years and 1 month to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments of $79.33, followed by 96 payments varying between $379.33 and $50 and one final payment of $10.75.

- Under the 2% of the balance payment option, it would take 10 years and 8 months to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments varying between $279.33 and $50, followed by 7 payments of $50 and one final payment of $21.53.

**Fees and Charges:** To open and maintain a line of credit, you must pay us the following fees:

- Application fee: $100 (due at application)
- Points: 1% of credit limit (due when account opened)
- Annual maintenance fee: $50 during the first 3 years, $75 thereafter (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between $500 and $900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

**Minimum Draw Requirement:** The minimum credit advance that you can receive is $200.

**Tax Deductibility:** You should consult a tax advisor regarding the deductibility of interest and charges for the line.

**Variable-Rate Feature:** The line has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum monthly payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. During the draw period, the index is the monthly average prime rate charged by banks. During the repayment period, the index is the weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year. Information on these indices is published in the *Federal Reserve Bulletin*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

The initial annual percentage rate is "discounted" -- it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for the first year your credit line is open.

Ask us for the current index values, margin, discount and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

**Rate Changes:** The annual percentage rate can change monthly. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Apart from this rate "cap," there is no limit on the amount by which the rate can change during any one-year period.

**Maximum Rate and Payment Examples:** If the ANNUAL PERCENTAGE RATE during the draw period equaled the 18% maximum and you had an outstanding balance of $10,000:

- Under the monthly interest-only payment option, the minimum monthly payment would be $150.

- Under the 2% of the balance payment option, the minimum monthly payment would be $350.

This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of $10,000 during the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $450. This annual percentage rate could be reached during the first month of the repayment period.

**Historical Example:** The following table shows how the annual percentage rate and the monthly payments for a single $10,000 credit advance would have changed based on changes in the indices over the past 15 years. For the draw period, the index values for the prime rate are from September of each year. For the repayment period, the index values for the yield on U.S. Treasury securities are from the first week ending in July. While only one payment amount per year is shown, payments under the 2% of the balance payment option and during the repayment period would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the indices or your payments will change in the future.

| | Year | Index | Margin* | ANNUAL PERCENTAGE RATE | Monthly Interest-Only Payments | Monthly 2% of Balance Payments |
|---|---|---|---|---|---|---|
| | | % | % | % | ($) | ($) |
| | 1974 | 12.00 | 2 | 10.00** | 83.33 | 283.33 |
| | 1975 | 7.88 | 2 | 9.88 | 82.33 | 221.55 |
| | 1976 | 7.00 | 2 | 9.00 | 75.00 | 169.34 |
| | 1977 | 7.13 | 2 | 9.13 | 76.08 | 133.41 |
| *Draw* | 1978 | 9.41 | 2 | 11.41 | 95.08 | 111.89 |
| *Period* | 1979 | 12.90 | 2 | 14.90 | 124.17 | 96.46 |
| | 1980 | 12.23 | 2 | 14.23 | 118.58 | 74.39 |
| | 1981 | 20.08 | 2 | 18.00*** | 150.00 | 64.13 |
| | 1982 | 13.50 | 2 | 15.50 | 129.17 | 50.00 |
| | 1983 | 11.00 | 2 | 13.00 | 108.33 | 50.00 |
| | 1984 | 12.17 | 2 | 14.17 | 418.08 | 50.00 |
| *Repayment* | 1985 | 7.66 | 2 | 9.66 | 264.01 | |
| *Period* | 1986 | 6.36 | 2 | 8.36 | 177.96 | |
| | 1987 | 6.71 | 2 | 8.71 | 124.45 | |
| | 1988 | 7.52 | 2 | 9.52 | 87.92 | |

* This is a margin we have used recently.
** This rate reflects a 4% "discount" we have used recently.
***This rate reflects the18% rate cap.

## G-15 -- Home Equity Model Clauses

**(a) Retention of Information:** This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

**(b) Availability of Terms:** To obtain the terms described below, you must submit your application before (*date*). However the (*description of terms*) are subject to change.

*or*

All of the terms described below are subject to change.

If these terms change [(other than the annual percentage rate)] and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

**(c) Security Interest:** We will take a [security interest in/ mortgage on] your home. You could lose your home if you do not meet the obligations in your agreement with us.

**(d) Possible Actions:** Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment [, and charge you certain fees]; (2) refuse to make additional extensions of credit; (3) reduce your credit limit [; and (4) make specific changes that are set forth in your agreement with us].

If you ask, we will give you more specific information about when we can take these actions.

*or*

**Possible Actions:** We can terminate your account, require you to pay us the entire outstanding balance in one payment[, and charge you certain fees] if:

· You engage in fraud or material misrepresentation in connection with the line.

· You do not meet the repayment terms.

· Your action or inaction adversely affects the collateral or our rights in the collateral.

We can refuse to make additional extensions of credit or reduce your credit limit if:

· The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.

· We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.

· You are in default of a material obligation in the agreement.

· Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.

· A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.

· The maximum annual percentage rate is reached.

[The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.]

**(e) Minimum Payment Requirements:** The length of the [draw period/repayment period] is (*length*). Payments will be due (*frequency*). Your minimum payment will equal (*how payment determined*).

[The minimum payment will not reduce the principal that is outstanding on your line./The minimum payment will not fully repay the principal that is outstanding on your line.] You will then be required to pay the entire balance in a single "balloon" payment.

**(f) Minimum Payment Example:** If you made only the minimum payments and took no other credit advances, it would take (*length of time*) to pay off a credit advance of $10,000 at an ANNUAL PERCENTAGE RATE of (*recent rate*). During that period, you would make (*number*) (*frequency*) payments of $___.

**(g) Fees and Charges:** To open and maintain a line of credit, you must pay the following fees to us:

(*Description of fee*) [$___/__% of _____] (*When payable*)

(*Description of fee*) [$___/__% of _____] (*When payable*)

You also must pay certain fees to third parties. These fees generally total [$___/__% of ______/between $___ and $___]. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

**(h) Minimum Draw and Balance Requirements:** The minimum credit advance you can receive is $___. You must maintain an outstanding balance of at least $___.

**(i) Negative Amortization:** Under some circumstances, your payments will not cover the finance charges that accrue and "negative amortization" will occur. Negative amortization will increase the amount that you owe us and reduce your equity in your home.

**(j) Tax Deductibility:** You should consult a tax advisor regarding the deductibility of interest and charges for the line.

**(k) Other Products:** If you ask, we will provide you with information on our other available home equity lines.

**(l) Variable-Rate Feature:** The plan has a variable-rate feature and the annual percentage rate (corresponding to the periodic rate) and the [minimum payment/term of the line] can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the (*identification of index*) and is [published in/available from] (*source of information*). To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

[The initial annual percentage rate is "discounted" -- it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for (*period*).]

Ask us for the current index value, margin, [discount,] and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

**(m) Rate Changes:** The annual percentage rate can change (*frequency*). [The rate cannot increase by more than __ percentage points in any one year period./There is no limit on the amount by which the rate can change in any one year period.] [The maximum ANNUAL PERCENTAGE RATE that can apply is __%./The ANNUAL PERCENTAGE RATE cannot increase by more than __ percentage points above the initial rate.] [Ask us for the specific rate limitations that will apply to your credit line.]

**(n) Maximum Rate and Payment Examples:** If you had an outstanding balance of $10,000, the minimum payment at the maximum ANNUAL PERCENTAGE RATE of __% would be $___. This annual percentage rate could be reached (*when maximum rate could be reached*).

**(o) Historical Example:** The following table shows how the annual percentage rate and the minimum payments for a single $10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from (*when values are measured*). [While only one payment amount per year is shown, payments would have varied during each year.]

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

| Year | Index | Margin | ANNUAL PERCENTAGE RATE | Minimum Payment |
|---|---|---|---|---|
| | (%) | (%) | (%) | ($) |
| 1975 | | | | |
| 1976 | | | | |
| 1977 | | | | |
| 1978 | | | | |
| 1979 | | | | |
| 1980 | | | | |
| 1981 | | | | |
| 1982 | | | | |
| 1983 | | | | |
| 1984 | | | | |
| 1985 | | | | |
| 1986 | | | | |
| 1987 | | | | |
| 1988 | | | | |
| 1989 | | | | |

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 46 FR 60191, Dec. 9, 1981; 54 FR 13868, Apr. 6, 1989; 54 FR 24689, June 9, 1989; 55 FR 38312, Sept. 18, 1990; 65 FR 58908, Oct. 3, 2000]

## APPENDIX H TO PART 226—CLOSED-END MODEL FORMS AND CLAUSES

H–1—Credit Sale Model Form (§226.18)
H–2—Loan Model Form (§226.18)
H–3—Amount Financed Itemization Model Form (§226.18(c))
H–4(A)—Variable-Rate Model Clauses (§226.18(f)(1))
H–4(B)—Variable-Rate Model Clauses (§226.18(f)(2))
H–4(C)—Variable-Rate Model Clauses (§226.19(b))
H–4(D)—Variable-Rate Model Clauses (§226.20(c))
H–5—Demand Feature Model Clauses (§226.18(I))
H–6—Assumption Policy Model Clause (§226.18(q))
H–7—Required Deposit Model Clause (§226.18(r))
H–8—Rescission Model Form (General) (§226.23)
H–9—Rescission Model Form (Refinancing With Original Creditor) (§226.23)
H–10—Credit Sale Sample
H–11—Installment Loan Sample
H–12—Refinancing Sample
H–13—Mortgage with Demand Feature Sample
H–14—Variable-Rate Mortgage Sample (§226.19(b))
H–15—Graduated Payment Mortgage Sample
H–16—Mortgage Sample (§226.32)

H-1—Credit Sale Model Form

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate. | FINANCE CHARGE<br>The dollar amount the credit will cost you. | Amount Financed<br>The amount of credit provided to you or on your behalf. | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled. | Total Sale Price<br>The total cost of your purchase on credit, including your downpayment of<br>$ ______. |
|---|---|---|---|---|
| % | $ | $ | $ | $ |

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☐ I do not want an itemization.

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| | | |
| | | |

**Insurance**
Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

| Type | Premium | Signature |
|---|---|---|
| Credit Life | | I want credit life insurance. ______ Signature |
| Credit Disability | | I want credit disability insurance. ______ Signature |
| Credit Life and Disability | | I want credit life and disability insurance. ______ Signature |

You may obtain property insurance from anyone you want that is acceptable to (creditor). If you get the insurance from (creditor), you will pay $______.

**Security:** You are giving a security interest in:
☐ the goods or property being purchased.
☐ (brief description of other property).

**Filing fees** $ ______ **Non-filing insurance** $ ______

**Late Charge:** If a payment is late, you will be charged $ ______/______% of the payment.

**Prepayment:** If you pay off early, you
☐ may ☐ will not have to pay a penalty.
☐ may ☐ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

---
e means an estimate

H-2—Loan Model Form

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate. | FINANCE CHARGE<br>The dollar amount the credit will cost you. | Amount Financed<br>The amount of credit provided to you or on your behalf. | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled. |
|---|---|---|---|
| % | $ | $ | $ |

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☐ I do not want an itemization.

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| | | |
| | | |

**Insurance**
Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

| Type | Premium | Signature |
|---|---|---|
| Credit Life | | I want credit life insurance. ______ Signature |
| Credit Disability | | I want credit disability insurance. ______ Signature |
| Credit Life and Disability | | I want credit life and disability insurance. ______ Signature |

You may obtain property insurance from anyone you want that is acceptable to (creditor). If you get the insurance from (creditor), you will pay $______.

**Security**: You are giving a security interest in:
☐ the goods or property being purchased.
☐ (brief description of other property).

**Filing fees** $______ **Non-filing insurance** $______

**Late Charge**: If a payment is late, you will be charged $______ /______% of the payment.

**Prepayment**: If you pay off early, you
☐ may ☐ will not have to pay a penalty.
☐ may ☐ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

e means an estimate

## H-3—Amount Financed Itemization Model Form

**Itemization of the Amount Financed of $____________________**

**$____________ Amount given to you directly**

**$____________ Amount paid on your account**

**Amount paid to others on your behalf**

**$____________ to [public officials] [credit bureau] [appraiser] [insurance company]**

**$____________ to (name of another creditor)**

**$____________ to (other)**

**$____________ Prepaid finance charge**

## H-4(A)—Variable-Rate Model Clauses

The annual percentage rate may increase during the term of this transaction if:
[the prime interest rate of (creditor) increases.]
[the balance in your deposit account falls below $__________.]
[you terminate your employment with (employer) .]

[The interest rate will not increase above ______%.]
[The maximum interest rate increase at one time will be ______%.]
[The rate will not increase more than once every (time period) .]

Any increase will take the form of:
[higher payment amounts.]
[more payments of the same amount.]
[a larger amount due at maturity.]

*Example based on the specific transaction*
[If the interest rate increases by ______% in (time period),
[your regular payments will increase to $__________.]
[you will have to make ______ additional payments.]
[your final payment will increase to $__________.]]

*Example based on a typical transaction*
[If your loan were for $_______ at _____% for (term) and the rate increased to _____% in (time period),
[your regular payments would increase by $__________.]
[you would have to make _____ additional payments.]
[your final payment would increase by $__________.]]

## H-4(B)—Variable-Rate Model Clauses

Your loan contains a variable-rate feature. Disclosures about the variable-rate feature have been provided to you earlier.

*H–4(C)—Variable-Rate Model Clauses*

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

*How Your Interest Rate and Payment Are Determined*

• Your interest rate will be based on [an index plus a margin] [a formula].

• Your payment will be based on the interest rate, loan balance, and loan term.

—[The interest rate will be based on (identification of index) plus our margin. Ask for our current interest rate and margin.]

—[The interest rate will be based on (identification of formula). Ask us for our current interest rate.]

—Information about the index [formula for rate adjustments] is published [can be found] ______________.

—[The initial interest rate is not based on the (index) (formula) used to make later adjustments. Ask us for the amount of current interest rate discounts.]

*How Your Interest Rate Can Change*

• Your interest rate can change (frequency).

• [Your interest rate cannot increase or decrease more than _____ percentage points at each adjustment.]

• Your interest rate cannot increase [or decrease] more than _____ percentage points over the term of the loan.

*How Your Payment Can Change*

• Your payment can change (frequency) based on changes in the interest rate.

• [Your payment cannot increase more than (amount or percentage) at each adjustment.]

• You will be notified in writing _______ days before the due date of a payment at a new level. This notice will contain information about your interest rates, payment amount, and loan balance.

• [You will be notified once each year during which interest rate adjustments, but no payment adjustments, have been made to your loan. This notice will contain information about your interest rates, payment amount, and loan balance.]

• [For example, on a $10,000 [term] loan with an initial interest rate of _______ [(the rate shown in the interest rate column below for the year 19 _______)] [(in effect (month) (year)], the maximum amount that the interest rate can rise under this program is _______ percentage points, to _______%, and the monthly payment can rise from a first-year payment of $_______ to a maximum of $_______ in the _________ year. To see what your payments would be, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be: $60,000 ÷ $10,000 = 6; 6 × _______ = $_______ per month.)]

*[Example*

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future.

The example is based on the following assumptions:

| | |
|---|---|
| Amount | $10,000 |
| Term | _________ |
| Change date | _________ |
| Payment adjustment | (frequency) |
| Interest adjustment | (frequency) |
| [Margin]* | _______ |
| Caps _______ [periodic interest rate cap] | |
| _______ [lifetime interest rate cap | |
| _______ [payment cap] | |
| [Interest rate carryover] | |
| [Negative amortization] | |
| [Interest rate discount]** | |
| Index.......(identification of index or formula) | |

*This is a margin we have used recently, your margin may be different.

**This is the amount of a discount we have provided recently; your loan may be discounted by a different amount.]

| Year | Index (%) | Margin (Percentage points) | Interest Rate (%) | Monthly Payment ($) | Remaining Balance ($) |
|---|---|---|---|---|---|
| 1982 | | | | | |
| 1983 | | | | | |
| 1984 | | | | | |
| 1985 | | | | | |
| 1986 | | | | | |
| 1987 | | | | | |
| 1988 | | | | | |
| 1989 | | | | | |
| 1990 | | | | | |
| 1991 | | | | | |
| 1992 | | | | | |

| Year | Index (%) | Margin (Percentage points) | Interest Rate (%) | Monthly Payment ($) | Remaining Balance ($) |
|---|---|---|---|---|---|
| 1993 | | | | | |
| 1994 | | | | | |
| 1995 | | | | | |
| 1996 | | | | | |

Note: To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of $60,000 taken out in 1982 would be: $60,000÷$10,000=6; 6×_______=$_______ per month.)

## H-4(D)—Variable-Rate Model Clauses

Your new interest rate will be _______%, which is based on an index value of _______%.
Your previous interest rate was _______%, which was based on an index value of _______%.
[The new interest rate does not reflect a change of _______ percentage point in the index value which was not added because of _______.]
[The new payment will be $_______.]
[Your new loan balance is $_______.]
[Your (new) (existing) payment will not be sufficient to cover the interest due and the difference will be added to the loan amount. The payment amount needed to pay your loan in full by the end of the term at the new interest rate is $_______.]
[The following interest rate adjustments have been implemented this year without changing your payment: _______. These interest rates were based on the following index values: _______.]

## H-5—Demand Feature Model Clauses

This obligation [is payable on demand.]
[has a demand feature.]
[All disclosures are based on an assumed maturity of one year.]

## H-6—Assumption Policy Model Clause

Assumption: Someone buying your house [may, subject to conditions, be allowed to] [cannot] assume the remainder of the mortgage on the original terms.

## H-7—Required Deposit Model Clause

The annual percentage rate does not take into account your required deposit.

## H-8—Rescission Model Form (General)

NOTICE OF RIGHT TO CANCEL

**Your Right to Cancel**
You are entering into a transaction that will result in a [mortgage/lien/ security interest] [on/in] your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

(1) the date of the transaction, which is

______________________________ ; or

(2) the date you received your Truth in Lending disclosures; or
(3) the date you received this notice of your right to cancel.

If you cancel the transaction, the [mortgage/lien/security interest] is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

**How to Cancel**
If you decide to cancel this transaction, you may do so by notifying us in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no

later than midnight of (date)
(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

______________________________ ____________
Consumer's Signature Date

H–9—RESCISSION MODEL FORM (REFINANCING WITH ORIGINAL CREDITOR)

NOTICE OF RIGHT TO CANCEL

Your Right To Cancel

You are entering into a new transaction to increase the amount of credit previously provided to you. Your home is the security for this new transaction. You have a legal right under federal law to cancel this new transaction, without cost, within three business days from whichever of the following events occurs last:

(1) the date of this new transaction, which is ______________; or

(2) the date you received your new Truth in Lending disclosures; or

(3) the date you received this notice of your right to cancel.

If you cancel this new transaction, it will not affect any amount that you presently owe. Your home is the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase of credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

You may keep any money we have given you in this new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below.

If we do not take possession of the money within 20 calendar days of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this new transaction, you may do so by notifying us in writing, at

______________________________________

(Creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

______________________________________

(Date) ______________________________________

(or midnight of the third business day following the latest of the three events listed above).

If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

______________________________________

Consumer's Signature

______________________________________

Date

H-10—Credit Sale Sample

**Big Wheel Auto**

Alice Green

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate. | FINANCE CHARGE<br>The dollar amount the credit will cost you. | Amount Financed<br>The amount of credit provided to you or on your behalf. | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled. | Total Sale Price<br>The total cost of your purchase on credit, including your downpayment of $ 1500 — |
|---|---|---|---|---|
| 14.84 % | $ 1496.80 | $ 6107.50 | $ 7604.30 | $ 9129.30 |

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☒ I do not want an itemization.

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| 36 | $211.23 | Monthly beginning 6-1-81 |
| | | |

**Insurance**
Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

| Type | Premium | Signature |
|---|---|---|
| Credit Life | $120 — | I want credit life insurance. Alice Green Signature |
| Credit Disability | | I want credit disability insurance. Signature |
| Credit Life and Disability | | I want credit life and disability insurance. Signature |

**Security:** You are giving a security interest in:
☒ the goods being purchased.
☐ ____________________.

**Filing fees** $ 12.50 **Non-filing insurance** $ ________

**Late Charge:** If a payment is late, you will be charged $10.

**Prepayment:** If you pay off early, you
☐ may ☐ will not have to pay a penalty.
☒ may ☐ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I have received a copy of this statement.

Alice Green 5-1-81
Signature Date

e means an estimate

H-11—Installment Loan Sample

**Friendly Bank & Trust Co.**
700 East Street
Little Creek, USA

Lisa Stone
22-4859-22
300 Maple Avenue
Little Creek, USA

| ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. | FINANCE CHARGE The dollar amount the credit will cost you. | Amount Financed The amount of credit provided to you or on your behalf. | Total of Payments The amount you will have paid after you have made all payments as scheduled. |
|---|---|---|---|
| 12 % | $ 675.31 | $ 5000- | $ 5675.31 |

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☒ I do not want an itemization.

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| 1 | $262.03 e | 6/1/81 |
| 23 | $235.36 | Monthly beginning 7/1/81 |

**Late Charge:** If a payment is late, you will be charged $5 or 10% of the payment, whichever is less.

**Prepayment:** If you pay off early, you ☒ may ☐ will not have to pay a penalty.

**Required Deposit:** The annual percentage rate does not take into account your required deposit.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

e means an estimate

H-12—Refinancing Sample

**Everyone's Credit Union**

Date: April 1, 1981

| ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. | FINANCE CHARGE The dollar amount the credit will cost you. | Amount Financed The amount of credit provided to you or on your behalf. | Total of Payments The amount you will have paid after you have made all payments as scheduled. |
|---|---|---|---|
| 15 % | $ 1285.06 | $ 5177.73 | $ 6462.79 |

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| 35 | $179.53 | monthly starting 5-1-81 |
| 1 | $179.24 | 4-1-84 |

**Insurance**
Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

| Type | Premium | Signature |
|---|---|---|
| Credit Life | | I want credit life insurance. Signature |
| Credit Disability | $177.73 | I want credit disability insurance. Signature Joseph Day |

**Security:** You are giving a security interest in: ☐ the goods or property being purchased. ☒ your automobile.

**Late Charge:** If a payment is late, you will be charged 20% of the interest due with a minimum charge of $.05.

**Prepayment:** If you pay off early, you will not have to pay a penalty.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

e means an estimate

**Itemization of the Amount Financed of $** 5177.73

$ 1000– Amount given to you directly
$ 3000– Amount paid on your account

Amount paid to others on your behalf
$ ______ to public officials
$ 500– to Coop Credit Union
$ 500– to Acme Finance Co.
$ 177.73 to Pan-Galactic Ins. Co.
$ ______ for credit report

$ ______ Prepaid finance charge

H-13—Mortgage with Demand Feature Sample

**Mortgage Savings and Loan Assoc.**
Date: April 15, 1981

Glenn Jones
700 Oak Drive
Little Creek, USA

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate. | FINANCE CHARGE<br>The dollar amount the credit will cost you. | Amount Financed<br>The amount of credit provided to you or on your behalf. | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled. |
|---|---|---|---|
| 14.85 % | $156,551.54 | $44,605.66 | $201,157.20 |

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| 360 | $558.77 | Monthly beginning 6/1/81 |

This obligation has a demand feature.

You may obtain property insurance from anyone you want that is acceptable to Mortgage Savings and Loan Assoc.. If you get the insurance from Mortgage Savings and Loan Assoc. you will pay $ 150-/year

**Security:** You are giving a security interest in:
☒ the goods or property being purchased.
☐ ________________________.

**Late Charge:** If a payment is late, you will be charged $ N/A 5 % of the payment.

**Prepayment:** If you pay off early, you may have to pay a penalty.

**Assumption:** Someone buying your house may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

e means an estimate

*H–14—Variable-Rate Mortgage Sample*

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

*How Your Interest Rate and Payment Are Determined*

• Your interest rate will be based on an index rate plus a margin.

• Your payment will be based on the interest rate, loan balance, and loan term.

—The interest rate will be based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year (your index), plus our margin. Ask us for our current interest rate and margin.

—Information about the index rate is published weekly in the Wall Street Journal.

• Your interest rate will equal the index rate plus our margin unless your interest rate "caps" limit the amount of change in the interest rate.

*How Your Interest Rate Can Change*

• Your interest rate can change yearly.

• Your interest rate cannot increase or decrease more than 2 percentage points per year.

• Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

*How Your Monthly Payment Can Change*

• Your monthly payment can increase or decrease substantially based on annual changes in the interest rate.

• [For example, on a $10,000, 30-year loan with an initial interest rate of 12.41 percent in effect in July 1996, the maximum amount that the interest rate can rise under this program is 5 percentage points, to 17.41 percent, and the monthly payment can rise from a first-year payment of $106.03 to a maximum of $145.34 in the fourth year. To see what your payment is, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be: $60,000÷$10,000=6; 6×106.03=$636.18 per month.)

• You will be notified in writing 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount and loan balance.]

*[Example*

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future. The example is based on the following assumptions:

| | |
|---|---|
| Amount | $10,000 |
| Term | 30 years |
| Payment adjustment | 1 year |
| Interest adjustment | 1 year |
| Margin | 3 percentage points |

Caps_______ 2 percentage points annual interest rate

_______ 5 percentage points lifetime interest rate

Index_______ Weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year.

| Year (as of 1st week ending in July) | Index (%) | Margin* (percentage points) | Interest Rate (%) | Monthly Payment ($) | Remaining Balance ($) |
|---|---|---|---|---|---|
| 1982 | 14.41 | 3 | 17.41 | 145.90 | 9,989.37 |
| 1983 | 9.78 | 3 | **15.41 | 129.81 | 9,969.66 |
| 1984 | 12.17 | 3 | 15.17 | 127.91 | 9,945.51 |
| 1985 | 7.66 | 3 | **13.17 | 112.43 | 9,903.70 |
| 1986 | 6.36 | 3 | ***12.41 | 106.73 | 9,848.94 |
| 1987 | 6.71 | 3 | ***12.41 | 106.73 | 9,786.98 |
| 1988 | 7.52 | 3 | ***12.41 | 106.73 | 9,716.88 |
| 1989 | 7.97 | 3 | ***12.41 | 106.73 | 9,637.56 |
| 1990 | 8.06 | 3 | ***12.41 | 106.73 | 9,547.83 |
| 1991 | 6.40 | 3 | ***12.41 | 106.73 | 9,446.29 |
| 1992 | 3.96 | 3 | ***12.41 | 106.73 | 9,331.56 |
| 1993 | 3.42 | 3 | ***12.41 | 106.73 | 9,201.61 |
| 1994 | 5.47 | 3 | ***12.41 | 106.73 | 9,054.72 |
| 1995 | 5.53 | 3 | ***12.41 | 106.73 | 8,888.52 |
| 1996 | 5.82 | 3 | ***12.41 | 106.73 | 8,700.37 |

*This is a margin we have used recently; your margin may be different.
**This interest rate reflects a 2 percentage point annual interest rate cap.
***This interest rate reflects a 5 percentage point lifetime interest rate cap.
Note: To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of $60,000 taken out in 1982 would be: $60,000÷$10,000=6; 6×$106.73=$640.38.)

• You will be notified in writing 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount and loan balance.]

H-15—Graduated Payment Mortgage Sample

**Convenient Savings and Loan** Account number: 4862-88

Michael Jones
500 Walnut Court, Little Creek USA

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate. | FINANCE CHARGE<br>The dollar amount the credit will cost you. | Amount Financed<br>The amount of credit provided to you or on your behalf. | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled. |
|---|---|---|---|
| 15.37 % | $177,970.44 | $43,777 | $221,548.44 |

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| 12 | $446.62 | monthly beginning 6/1/81 |
| 12 | $479.67 | " " 6/1/82 |
| 12 | $515.11 | " " 6/1/83 |
| 12 | $553.13 | " " 6/1/84 |
| 12 | $593.91 | " " 6/1/85 |
| 300 | varying from $637.68 to $627.37 | " " 6/1/86 |

**Security:** You are giving a security interest in the property being purchased.

**Late Charge:** If a payment is late, you will be charged 5% of the payment.

**Prepayment:** If you pay off early, you
☒ may ☐ will not have to pay a penalty.
☒ may ☐ will not be entitled to a refund of part of the finance charge.

**Assumption:** Someone buying your home cannot assume the remainder of the mortgage on the original terms.

**See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.**

**e means an estimate**

H-16—Mortgage Sample

**You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.**

**If you obtain this loan, the lender will have a mortgage on your home.**

**YOU COULD LOSE YOUR HOME, AND ANY MONEY YOU HAVE PUT INTO IT, IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN.**

You are borrowing $___.___ (optional credit insurance is ☐ is not ☐ included in this amount).

The annual percentage rate on your loan will be: ______%.

Your regular [frequency] payment will be: $______.
[At the end of your loan, you will still owe us: $ [balloon amount].]

[Your interest rate may increase. Increases in the interest rate could increase your payment. The highest amount your payment could increase is to $_______.]

[46 FR 20892, Apr. 7, 1981, as amended at 46 FR 29246, June 1, 1981; 52 FR 52 FR 48671, Dec. 24, 1987; 53 FR 467, Jan. 7, 1988; Reg. Z, 60 FR 15473, Mar. 24, 1995; 61 FR 49247, Sept. 19, 1996; 62 FR 63444, 63445, Dec. 1, 1997; 62 FR 66179, Dec. 17, 1997; Reg. Z, 63 FR 2723, Jan. 16, 1998; 66 FR 65618, Dec. 20, 2001]

## APPENDIX I TO PART 226—FEDERAL ENFORCEMENT AGENCIES

The following list indicates which federal agency enforces Regulation Z for particular classes of businesses. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

*National banks and federal branches and federal agencies of foreign banks*

District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

*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*

Federal Reserve Bank serving the district in which the institution is located.

*Non-member insured banks and insured state branches of foreign banks*

Federal Deposit Insurance Corporation Regional director for the region in which the institution is located.

SAVINGS INSTITUTIONS INSURED UNDER THE SAVINGS ASSOCIATION INSURANCE FUND OF THE FDIC AND FEDERALLY CHARTERED SAVINGS BANKS INSURED UNDER THE BANK INSURANCE FUND OF THE FDIC (BUT NOT INCLUDING STATE-CHARTERED SAVINGS BANKS INSURED UNDER THE BANK INSURANCE FUND).

Office of Thrift Supervision Regional Director for the region in which the institution is located.

FEDERAL CREDIT UNIONS

Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

AIR CARRIERS

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

CREDITORS SUBJECT TO PACKERS AND STOCKYARDS ACT

Nearest Packers and Stockyards Administration area supervisor.

FEDERAL LAND BANKS, FEDERAL LAND BANK ASSOCIATIONS, FEDERAL INTERMEDIATE CREDIT BANKS AND PRODUCTION CREDIT ASSOCIATIONS.

Farm Credit Administration, 490 L'Enfant Plaza, SW., Washington, DC 20578.

RETAIL, DEPARTMENT STORES, CONSUMER FINANCE COMPANIES, ALL OTHER CREDITORS, AND ALL NONBANK CREDIT CARD ISSUERS (CREDITORS OPERATING ON A LOCAL OR REGIONAL BASIS SHOULD USE THE ADDRESS OF THE FTC REGIONAL OFFICE IN WHICH THEY OPERATE.)

Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 50 FR 8708, Mar. 5, 1985; 54 FR 53539, Dec. 29, 1989; 56 FR 51322, Oct. 11, 1991; 57 FR 20400, May 13, 1992]

## APPENDIX J TO PART 226—ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CLOSED-END CREDIT TRANSACTIONS

### (A) INTRODUCTION

(1) Section 226.22(a) of Regulation Z provides that the annual percentage rate for other than open end credit transactions shall be determined in accordance with either the actuarial method or the United States Rule method. This appendix contains an explanation of the actuarial method as well as equations, instructions and examples of how this method applies to single advance and multiple advance transactions.

(2) Under the actuarial method, at the end of each unit-period (or fractional unit-period) the unpaid balance of the amount financed is increased by the finance charge earned during that period and is decreased by the total payment (if any) made at the end of that period. The determination of unit-periods and fractional unit-periods shall be consistent with the definitions and rules in paragraphs (b) (3), (4) and (5) of this section and the general equation in paragraph (b)(8) of this section.

(3) In contrast, under the United States Rule method, at the end of each payment period, the unpaid balance of the amount financed is increased by the finance charge earned during that payment period and is decreased by the payment made at the end of that payment period. If the payment is less than the finance charge earned, the adjustment of the unpaid balance of the amount financed is postponed until the end of the next payment period. If at that time the sum of the two payments is still less than the total earned finance charge for the two payment periods, the adjustment of the unpaid balance of the amount financed is postponed still another payment period, and so forth.

### (B) INSTRUCTIONS AND EQUATIONS FOR THE ACTUARIAL METHOD

#### *(1) General Rule*

The annual percentage rate shall be the nominal annual percentage rate determined by multiplying the unit-period rate by the number of unit-periods in a year.

*(2) Term of the Transaction*

The term of the transaction begins on the date of its consummation, except that if the finance charge or any portion of it is earned beginning on a later date, the term begins on the later date. The term ends on the date the last payment is due, except that if an advance is scheduled after that date, the term ends on the later date. For computation purposes, the length of the term shall be equal to the time interval between any point in time on the beginning date to the same point in time on the ending date.

*(3) Definitions of Time Intervals*

(i) A period is the interval of time between advances or between payments and includes the interval of time between the date the finance charge begins to be earned and the date of the first advance thereafter or the date of the first payment thereafter, as applicable.

(ii) A common period is any period that occurs more than once in a transaction.

(iii) A standard interval of time is a day, week, semimonth, month, or a multiple of a week or a month up to, but not exceeding, 1 year.

(iv) All months shall be considered equal. Full months shall be measured from any point in time on a given date of a given month to the same point in time on the same date of another month. If a series of payments (or advances) is scheduled for the last day of each month, months shall be measured from the last day of the given month to the last day of another month. If payments (or advances) are scheduled for the 29th or 30th of each month, the last day of February shall be used when applicable.

*(4) Unit-period*

(i) In all transactions other than a single advance, single payment transaction, the unit-period shall be that common period, not to exceed 1 year, that occurs most frequently in the transaction, except that

(A) If 2 or more common periods occur with equal frequency, the smaller of such common periods shall be the unit-period; or

(B) If there is no common period in the transaction, the unit-period shall be that period which is the average of all periods rounded to the nearest whole standard interval of time. If the average is equally near 2 standard intervals of time, the lower shall be the unit-period.

(ii) In a single advance, single payment transaction, the unit-period shall be the term of the transaction, but shall not exceed 1 year.

*(5) Number of Unit-periods Between 2 Given Dates*

(i) The number of days between 2 dates shall be the number of 24-hour intervals between any point in time on the first date to the same point in time on the second date.

(ii) If the unit-period is a month, the number of full unit-periods between 2 dates shall be the number of months measured back from the later date. The remaining fraction of a unit-period shall be the number of days measured forward from the earlier date to the beginning of the first full unit-period, divided by 30. If the unit-period is a month, there are 12 unit-periods per year.

(iii) If the unit-period is a semimonth or a multiple of a month not exceeding 11 months, the number of days between 2 dates shall be 30 times the number of full months measured back from the later date, plus the number of remaining days. The number of full unit-periods and the remaining fraction of a unit-period shall be determined by dividing such number of days by 15 in the case of a semimonthly unit-period or by the appropriate multiple of 30 in the case of a multimonthly unit-period. If the unit-period is a semimonth, the number of unit-periods per year shall be 24. If the number of unit-periods is a multiple of a month, the number of unit-periods per year shall be 12 divided by the number of months per unit-period.

(iv) If the unit-period is a day, a week, or a multiple of a week, the number of full unit-periods and the remaining fractions of a unit-period shall be determined by dividing the number of days between the 2 given dates by the number of days per unit-period. If the unit-period is a day, the number of unit-periods per year shall be 365. If the unit-period is a week or a multiple of a week, the number of unit-periods per year shall be 52 divided by the number of weeks per unit-period.

(v) If the unit-period is a year, the number of full unit-periods between 2 dates shall be the number of full years (each equal to 12 months) measured back from the later date. The remaining fraction of a unit-period shall be

(A) The remaining number of months divided by 12 if the remaining interval is equal to a whole number of months, or

(B) The remaining number of days divided by 365 if the remaining interval is *not* equal to a whole number of months.

(vi) In a single advance, single payment transaction in which the term is less than a year and is equal to a whole number of months, the number of unit-periods in the term shall be 1, and the number of unit-periods per year shall be 12 divided by the number of months in the term or 365 divided by the number of days in the term.

(vii) In a single advance, single payment transaction in which the term is less than a year and is *not* equal to a whole number of months, the number of unit-periods in the term shall be 1, and the number of unit-periods per year shall be 365 divided by the number of days in the term.

*(6) Percentage Rate for a Fraction of a Unit-period*

The percentage rate of finance charge for a fraction (less than 1) of a unit-period shall be equal to such fraction multiplied by the percentage rate of finance charge per unit-period.

(7) Symbols. The symbols used to express the terms of a transaction in the equation set forth in paragraph (b)(8) of this section are defined as follows:

$A_k$ = The amount of the kth advance.

$q_k$ = The number of full unit-periods from the beginning of the term of the transaction to the kth advance.

$e_k$ = The fraction of a unit-period in the time interval from the beginning of the term of the transaction to the kth advance.

$m$ = The number of advances.

$P_j$ = The amount of the jth payment.

$t_j$ = The number of full unit-periods from the beginning of the term of the transaction to the jth payment.

$f_j$ = The fraction of a unit-period in the time interval from the beginning of the term of the transaction to the jth payment.

$n$ = The number of payments.

$i$ = The percentage rate of finance charge per unit-period, expressed as a decimal equivalent.

Symbols used in the examples shown in this appendix are defined as follows:

$\ddot{a}_{\overline{x|}}$ = The present value of 1 per unit-period for x unit-periods, first payment due immediately.

$$= 1 + \frac{1}{(1+i)} + \frac{1}{(1+i)^2} + \ldots\ldots\ldots + \frac{1}{(1+i)^{x-1}}$$

$w$ = The number of unit-periods per year.

$I$ = $wi \times 100$ = The nominal annual percentage rate.

(8) General equation. The following equation sets forth the relationship among the terms of a transaction:

$$\frac{A_1}{(1+e_1 i)(1+i)^{q_1}} + \frac{A_2}{(1+e_2 i)(1+i)^{q_2}} + \ldots + \frac{A_m}{(1+e_m i)(1+i)^{q_m}} =$$

$$\frac{P_1}{(1+f_1 i)(1+i)^{t_1}} + \frac{P_2}{(1+f_2 i)(1+i)^{t_2}} + \ldots + \frac{P_n}{(1+f_n i)(1+i)^{t_n}}$$

(9) Solution of general equation by iteration process. (i) The general equation in paragraph (b)(8) of this section, when applied to a simple transaction in which a loan of \$1000 is repaid by 36 monthly payments of \$33.61 each, takes the special form:

$$A = \frac{33.61\, \ddot{a}_{\overline{36}|}}{(1+i)}$$

| | | |
|---|---|---|
| Step 1: | Let $I_1$ = estimated annual percentage rate = | 12.50 % |
| | Evaluate expression for A, letting $i = I_1/(100w)$ = | .010416667 |
| | Result (referred to as A')= | 1004.674391 |
| Step 2: | Let $I_2 = I_1 + .1$ = | 12.60 % |
| | Evaluate expression for A, letting $i = I_2/(100w)$ = | .010500000 |
| | Result (referred to as A'') = | 1003.235366 |
| Step 3: | Interpolate for I (annual percentage rate): | |
| | $I = I_1 + .1\left[\frac{(A - A')}{(A''-A')}\right]$ | |
| | $= 12.50 + .1\left[\frac{(1000.000000 - 1004.674391)}{(1003.235366 - 1004.674391)}\right] =$ | 12.82483042 % |
| Step 4: | First iteration, let $I_1$ = 12.82483042 % and repeat Steps 1, 2, and 3 obtaining a new I = | 12.82557859 % |
| | Second iteration, let $I_1$ = 12.82557859 % and repeat Steps 1, 2, and 3 obtaining a new I = | 12.82557529 % |

In this case, no further iterations are required to obtain the annual percentage rate correct to two decimal places, 12.83%.

(ii) When the iteration approach is used, it is expected that calculators or computers will be programmed to carry all available decimals throughout the calculation and that enough iterations will be performed to make virtually certain that the annual percentage rate obtained, when rounded to 2 decimals, is correct. Annual percentage rates in the examples below were obtained by using a 10 digit programmable calculator and the iteration procedure described above.

(c) Examples for the actuarial method. (1) Single advance transaction, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^{t}}\left(P\,\ddot{a}_{\overline{n}|}\right)$$

Example (i): Monthly payments (regular first period)

Amount advanced (A) = $5000. Payment (P) = $230.
Number of payments (n) = 24.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. (t = 1; f= 0)
Annual percentage rate (I) = wi = .0969 = 9.69 %

Example (ii): Monthly payments (long first period)

Amount advanced (A) = $6000. Payment (P) = $200.
Number of payments (n) = 36.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 2-10-78. First payment, 4-1-78.
From 3-1-78 through 4-1-78 = 1 unit-period. (t = 1)
From 2-10-78 through 3-1-78 = 19 days. (f = 19/30)
Annual percentage rate (I) = wi = .1182 = 11.82%

Example (iii): Semimonthly payments (short first period)

Amount advanced (A) = $5000. Payment (P) = $219.17.
Number of payments (n) = 24.
Unit-period = 1/2 month. Unit-periods per year (w) = 24.
Advance, 2-23-78. First payment, 3-1-78. Payments made on 1st and 16th of each month.
From 2-23-78 through 3-1-78 = 6 days. (t = 0; f = 6/15)
Annual percentage rate (I) = wi = .1034 = 10.34 %

Example (iv): Quarterly payments (long first period)

Amount advanced (A) = $10,000. Payment (P) = $385.
Number of payments (n) = 40.
Unit-period = 3 months. Unit-periods per year (w) = 4.
Advance, 5-23-78. First payment, 10-1-78.
From 7-1-78 through 10-1-78 = 1 unit-period. (t = 1)
From 6-1-78 through 7-1-78 = 1 month = 30 days. From 5-23-78 through 6-1-78 = 9 days. (f = 39/90)
Annual percentage rate (I) = wi = .0897 = 8.97 %

Example (v): Weekly payments (long first period)

Amount advanced (A) = \$500. Payment (P) = \$17.60.
Number of payments (n) = 30.
Unit-period = 1 week. Unit-periods per year (w) = 52.
Advance, 3-20-78. First payment, 4-21-78.
From 3-24-78 through 4-21-78 = 4 unit-periods. (t = 4)
From 3-20-78 through 3-24-78 = 4 days. (f = 4/7)
Annual percentage rate (I) = wi = .1496 = 14.96 %

(2) Single advance transaction, with an odd first payment, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^{t}} \left[ P_1 + \frac{P\,\ddot{a}_{\overline{n-1}|}}{(1+i)} \right]$$

Example (i): Monthly payments (regular first period and irregular first payment)

Amount advanced (A) = \$5000. First payment $(P_1)$ = \$250.
Regular payment (P) = \$230. Number of payments (n) = 24.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. (t = 1; f = 0)
Annual percentage rate (I) = wi = .1008 = 10.08%

Example (ii): Payments every 4 weeks (long first period and irregular first payment)

Amount advanced (A) = \$400. First payment $(P_1)$ = \$39.50.
Regular payment (P) = \$38.31. Number of payments (n) = 12.
Unit-period = 4 weeks. Unit-periods per year (w) = 52/4 = 13.
Advance, 3-18-78. First payment, 4-20-78.
From 3-23-78 through 4-20-78 = 1 unit-period. (t = 1)
From 3-18-78 through 3-23-78 = 5 days. (f = 5/28)
Annual percentage rate (I) = wi = .2850 = 28.50%

(3) Single advance transaction, with an odd final payment, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^{t}} \left[ P\,\ddot{a}_{\overline{n-1}|} + \frac{P_n}{(1+i)^{n-1}} \right]$$

Example (i): Monthly payments (regular first period and irregular final payment)

Amount advanced (A) = \$5000. Regular payment (P) = \$230.
Final payment $\left(P_n\right)$ = \$280. Number of payments (n) = 24.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. (t = 1; f = 0)
Annual percentage rate (I) = wi = .1050 = 10.50%

Example (ii): Payments every 2 weeks (short first period and irregular final payment)

Amount advanced (A) = \$200. Regular payment (P) = \$9.50.
Final payment $\left(P_n\right)$ = \$30. Number of payments (n) = 20.
Unit-period = 2 weeks. Unit-periods per year (w) = 52/2 = 26.
Advance, 4-3-78. First payment, 4-11-78.
From 4-3-78 through 4-11-78 = 8 days. (t = 0; f = 8/14)
Annual percentage rate (I) = wi = .1222 = 12.22%

(4) Single advance transaction, with an odd first payment, odd final payment, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^t}\left[P_1 + \frac{P\ddot{a}_{\overline{n-2}|}}{(1+i)} + \frac{P_n}{(1+i)^{n-1}}\right]$$

Example (i): Monthly payments (regular first period, irregular first payment, and irregular final payment)

Amount advanced (A) = \$5000. First payment $\left(P_1\right)$ = \$250.
Regular payment (P) = \$230. Final payment $\left(P_n\right)$ = \$280.
Number of payments (n) = 24. Unit-period = 1 month.
Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. (t = 1; f = 0)
Annual percentage rate (I) = wi = .1090 = 10.90%

Example (ii): Payments every two months (short first period, irregular first payment, and irregular final payment)

Amount advanced (A) = \$8000. First payment $\left(P_1\right)$ = \$449.36.
Regular payment (P) = \$465. Final payment $\left(P_n\right)$ = \$200.
Number of payments (n) = 20. Unit-period = 2 months.
Unit-periods per year (w) = 12/2 = 6.
Advance, 1-10-78. First payment, 3-1-78.
From 2-1-78 through 3-1-78 = 1 month. From 1-10-78 through 2-1-78 = 22 days. (t = 0; f = 52/60)
Annual percentage rate (I) = wi = .0730 = 7.30%

(5) Single advance, single payment transaction. The general equation in paragraph (b)(8) of this section can be put in the special forms below for single advance, single payment transactions. Forms 1 through 3 are for the direct determination of the annual percentage rate under special conditions. Form 4 requires the use of the iteration procedure of paragraph (b)(9) of this section and can be used for all single advance, single payment transactions regardless of term.

Form 1 - Term less than 1 year:

$$I = 100w\left(\frac{P}{A} - 1\right)$$

Form 2 - Term more than 1 year but less than 2 years:

$$I = \frac{50}{f}\left\{\left[(1 + f)^{2} + 4f\left(\frac{P}{A} - 1\right)\right]^{1/2} - (1 + f)\right\}$$

Form 3 - Term equal to exactly a year or exact multiple of a year:

$$I = 100\left[\left(\frac{P}{A}\right)^{1/t} - 1\right]$$

Form 4 - Special form for iteration procedure (no restriction on term):

$$A = \frac{P}{(1 + fi)(1 + i)^{t}}$$

Example (i): Single advance, single payment (term of less than 1 year, measured in days)

Amount advanced (A) = \$1000. Payment (P) = \$1080.
Unit-period = 255 days. Unit-periods per year (w) = 365/255.
Advance, 1-3-78. Payment, 9-15-78.
From 1-3-78 through 9-15-78 = 255 days. (t = 1; f = 0)
Annual percentage rate (I) = wi = .1145 = 11.45%. (Use Form 1 or 4.)

Example (ii): Single advance, single payment (term of less than 1 year, measured in exact calendar months)

Amount advanced (A) = \$1000. Payment (P) = \$1044.
Unit-period = 6 months. Unit-periods per year (w) = 2.
Advance, 7-15-78. Payment, 1-15-79.
From 7-15-78 through 1-15-79 = 6 mos. (t = 1; f = 0)
Annual percentage rate (I) = wi = .0880 = 8.80%. (Use Form 1 or 4.)

Example (iii): Single advance, single payment (term of more than 1 year but less than 2 years, fraction measured in exact months)

Amount advanced (A) = \$1000. Payment (P) = \$1135.19.
Unit-period = 1 year. Unit-periods per year (w) = 1.
Advance, 7-17-78. Payment, 1-17-80.
From 1-17-79 through 1-17-80 = 1 unit-period. (t = 1)
From 7-17-78 through 1-17-79 = 6 mos. (f = 6/12)
Annual percentage rate (I) = wi = .0876 = 8.76%. (Use Form 2 or 4.)

Example (iv): Single advance, single payment (term of exactly 2 years)

Amount advanced (A) = \$1000. Payment (P) = \$1240.
Unit-period = 1 year. Unit-periods per year (w) = 1.
Advance, 1-3-78. Payment, 1-3-80.
From 1-3-78 through 1-3-79 = 1 unit-period. ($t = 2$; $f = 0$)
Annual percentage rate (I) = wi = .1136 = 11.36%. (Use Form 3 or 4.)

(6) Complex single advance transaction.

Example (i): Skipped payment loan (payments every 4 weeks)

A loan of \$2135 is advanced on 1-25-78. It is to be repaid by 24 payments of \$100 each. Payments are due every 4 weeks beginning 2-20-78. However, in those months in which 2 payments would be due, only the first of the 2 payments is made and the following payment is delayed by 2 weeks to place it in the next month.
Unit-period = 4 weeks. Unit-periods per year (w) = 52/4 = 13.
First series of payments begins 26 days after 1-25-78.
($t_1 = 0$; $f_1 = 26/28$)

Second series of payments begins 9 unit-periods plus 2 weeks after start of first series. ($t_2 = 10$; $f_2 = 12/28$)

Third series of payments begins 6 unit-periods plus 2 weeks after start of second series. ($t_3 = 16$; $f_3 = 26/28$)

Last series of payments begins 6 unit-periods plus 2 weeks after start of third series. ($t_4 = 23$; $f_4 = 12/28$)

The general equation in paragraph (b)(8) of this section can be written in the special form:

$$2135 = \frac{100\,\ddot{a}_{\overline{9}|}}{(1+(26/28)i)} + \frac{100\,\ddot{a}_{\overline{6}|}}{(1+(12/28)i)(1+i)^{10}} + \frac{100\,\ddot{a}_{\overline{6}|}}{(1+(26/28)i)(1+i)^{16}} + \frac{100\,\ddot{a}_{\overline{3}|}}{(1+(12/28)i)(1+i)^{23}}$$

Annual percentage rate (I) = wi = .1200 = 12.00%

Example (ii): Skipped payment loan plus single payments

A loan of $7350 on 3-3-78 is to be repaid by 3 monthly payments of $1000 each beginning 9-15-78, plus a single payment of $2000 on 3-15-79, plus 3 more monthly payments of $750 each beginning 9-15-79, plus a final payment of $1000 on 2-1-80.
Unit-period = 1 month. Unit-periods per year (w) = 12.
First series of payments begins 6 unit-periods plus 12 days after 3-3-78. ($t_1$ = 6; $f_1$ = 12/30)

Second series of payments (single payment) occurs 12 unit-periods plus 12 days after 3-3-78. ($t_2$ = 12; $f_2$ = 12/30)

Third series of payments begins 18 unit-periods plus 12 days after 3-3-78. ($t_3$ = 18; $f_3$ = 12/30)

Final payment occurs 22 unit-periods plus 29 days after 3-3-78. ($t_4$ = 22; $f_4$ = 29/30)

The general equation in paragraph (b)(8) of this section can be written in the special form:

$$7350 = \frac{1000\ \ddot{a}_{\overline{3|}}}{(1+(12/30)i)(1+i)^{6}} + \frac{2000}{(1+(12/30)i)(1+i)^{12}} +$$

$$\frac{750\ \ddot{a}_{\overline{3|}}}{(1+(12/30)i)(1+i)^{18}} + \frac{1000}{(1+(29/30)i)(1+i)^{22}}$$

Annual percentage rate (I) = wi = .1022 = 10.22%

Example (iii): Mortgage with varying payments

A loan of $39,688.56 (net) on 4-10-78 is to be repaid by 360 monthly payments beginning 6-1-78. Payments are the same for 12 months at a time as follows:

| Year | Monthly payment | Year | Monthly payment | Year | Monthly payment |
|---|---|---|---|---|---|
| 1 | $291.81 | 11 | $385.76 | 21 | $380.43 |
| 2 | 300.18 | 12 | 385.42 | 22 | 379.60 |
| 3 | 308.78 | 13 | 385.03 | 23 | 378.68 |
| 4 | 317.61 | 14 | 384.62 | 24 | 377.69 |
| 5 | 326.65 | 15 | 384.17 | 25 | 376.60 |
| 6 | 335.92 | 16 | 383.67 | 26 | 375.42 |
| 7 | 345.42 | 17 | 383.13 | 27 | 374.13 |
| 8 | 355.15 | 18 | 382.54 | 28 | 372.72 |
| 9 | 365.12 | 19 | 381.90 | 29 | 371.18 |
| 10 | 375.33 | 20 | 381.20 | 30 | 369.50 |

Unit-period = 1 month. Unit-periods per year (w) = 12.
From 5-1-78 through 6-1-78 = 1 unit-period. (t = 1)
From 4-10-78 through 5-1-78 = 21 days. (f = 21/30)

The general equation in paragraph (b)(8) of this section can be written in the special form:

$$39{,}688.56 = \frac{\ddot{a}_{\overline{12|}}}{(1+(21/30)i)(1+i)} \left[ 291.81 + \frac{300.18}{(1+i)^{12}} + \frac{308.78}{(1+i)^{24}} + \cdots + \frac{369.50}{(1+i)^{348}} \right]$$

Annual percentage rate (I) = wi = .0980 = 9.80%

(7) Multiple advance transactions.

Example (i): Construction loan

Three advances of $20,000 each are made on 4-10-79, 6-12-79, and 9-18-79. Repayment is by 240 monthly payments of $612.36 each beginning 12-10-79.
Unit-period = 1 month. Unit-periods per year (w) = 12.
From 4-10-79 through 6-12-79 = (2+2/30) unit-periods.
From 4-10-79 through 9-18-79 = (5+8/30) unit-periods.
From 4-10-79 through 12-10-79 = (8) unit-periods.

The general equation in paragraph (b)(8) of this section is changed to the single advance mode by treating the 2nd and 3rd advances as negative payments:

$$20{,}000 = \frac{612.36\, \ddot{a}_{\overline{240|}}}{(1+i)^{8}} - \frac{20{,}000}{(1+(2/30)i)(1+i)^{2}} - \frac{20{,}000}{(1+(8/30)i)(1+i)^{5}}$$

Annual percentage rate (I) = wi = .1025 = 10.25%

Example (ii): Student loan

A student loan consists of 8 advances: $1800 on 9-5-78, 9-5-79, 9-5-80, and 9-5-81; plus $1000 on 1-5-79, 1-5-80, 1-5-81, and 1-5-82. The borrower is to make 50 monthly payments of $240 each beginning 7-1-78 (prior to first advance).
Unit-period = 1 month. Unit-periods per year (w) = 12.
Zero point is date of first payment since it precedes first advance.
From 7-1-78 to 9-5-78 = (2 + 4/30) unit-periods.

" " " 9-5-79 = (14 + 4/30) "

" " " 9-5-80 = (26 + 4/30) "

" " " 9-5-81 = (38 + 4/30) "

" " " 1-5-79 = (6 + 4/30) "

" " " 1-5-80 = (18 + 4/30) "

" " " 1-5-81 = (30 + 4/30) "

" " " 1-5-82 = (42 + 4/30) "

Since the zero point is date of first payment, the general equation in paragraph (b)(8) of this section is written in the single advance form below by treating the first payment as a negative advance and the 8 advances as negative payments:

$$-240 = \frac{240\, \ddot{a}_{\overline{49|}}}{(1+i)} - \frac{1800}{(1+(4/30)i)}\left[\frac{1}{(1+i)^{2}} + \frac{1}{(1+i)^{14}} + \frac{1}{(1+i)^{26}} + \frac{1}{(1+i)^{38}}\right]$$

$$- \frac{1000}{(1+(4/30)i)}\left[\frac{1}{(1+i)^{6}} + \frac{1}{(1+i)^{18}} + \frac{1}{(1+i)^{30}} + \frac{1}{(1+i)^{42}}\right]$$

Annual percentage rate (I) = wi = .3204 = 32.04%

[46 FR 20892, Apr. 7, 1981, as amended at 46 FR 29246, June 1, 1981]

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 46 FR 29246, June 1, 1981]

## APPENDIX K TO PART 226—TOTAL ANNUAL LOAN COST RATE COMPUTATIONS FOR REVERSE MORTGAGE TRANSACTIONS

(a) *Introduction.* Creditors are required to disclose a series of total annual loan cost rates for each reverse mortgage transaction. This appendix contains the equations creditors must use in computing the total annual loan cost rate for various transactions, as well as instructions, explanations, and examples for various transactions. This appendix is modeled after Appendix J of this part (Annual Percentage Rates Computations for Closed-end Credit Transactions); creditors should consult Appendix J of this part for additional guidance in using the formulas for reverse mortgages.

(b) *Instructions and equations for the total annual loan cost rate*—(1) *General rule.* The total annual loan cost rate shall be the nominal total annual loan cost rate determined by multiplying the unit-period rate by the number of unit-periods in a year.

(2) *Term of the transaction.* For purposes of total annual loan cost disclosures, the term of a reverse mortgage transaction is assumed to begin on the first of the month in which consummation is expected to occur. If a loan cost or any portion of a loan cost is initially incurred beginning on a date later than consummation, the term of the transaction is assumed to begin on the first of the month in which that loan cost is incurred. For purposes of total annual loan cost disclosures, the term ends on each of the assumed loan periods specified in §226.33(c)(6).

(3) *Definitions of time intervals.*

(i) A *period* is the interval of time between advances.

(ii) A *common period* is any period that occurs more than once in a transaction.

(iii) A *standard interval of time* is a day, week, semimonth, month, or a multiple of a week or a month up to, but not exceeding, 1 year.

(iv) All months shall be considered to have an equal number of days.

(4) *Unit-period.* (i) In all transactions other than single-advance, single-payment transactions, the unit-period shall be that common period, not to exceed one year, that occurs most frequently in the transaction, except that:

(A) If two or more common periods occur with equal frequency, the smaller of such common periods shall be the unit-period; or

(B) If there is no common period in the transaction, the unit-period shall be that period which is the average of all periods rounded to the nearest whole standard interval of time. If the average is equally near two standard intervals of time, the lower shall be the unit-period.

(ii) In a single-advance, single-payment transaction, the unit-period shall be the term of the transaction, but shall not exceed one year.

(5) *Number of unit-periods between two given dates.* (i) The number of days between two dates shall be the number of 24-hour intervals between any point in time on the first date to the same point in time on the second date.

(ii) If the unit-period is a month, the number of full unit-periods between two dates shall be the number of months. If the unit-period is a month, the number of unit-periods per year shall be 12.

(iii) If the unit-period is a semimonth or a multiple of a month not exceeding 11 months, the number of days between two dates shall be 30 times the number of full months. The number of full unit-periods shall be determined by dividing the number of days by 15 in the case of a semimonthly unit-period or by the appropriate multiple of 30 in the case of a multimonthly unit-period. If the unit-period is a semimonth, the number of unit-periods per year shall be 24. If the number of unit-periods is a multiple of a month, the number of unit-periods per year shall be 12 divided by the number of months per unit-period.

(iv) If the unit-period is a day, a week, or a multiple of a week, the number of full unit-periods shall be determined by dividing the number of days between the two given dates by the number of days per unit-period. If the unit-period is a day, the number of unit-periods per year shall be 365. If the unit-period is a week or a multiple of a week, the number of unit-periods per year shall be 52 divided by the number of weeks per unit-period.

(v) If the unit-period is a year, the number of full unit-periods between two dates shall be the number of full years (each equal to 12 months).

(6) *Symbols.* The symbols used to express the terms of a transaction in the equation set forth in paragraph (b)(8) of this appendix are defined as follows:

$A_j$=The amount of each periodic or lump-sum advance to the consumer under the reverse mortgage transaction.

i=Percentage rate of the total annual loan cost per unit-period, expressed as a decimal equivalent.

j=The number of unit-periods until the jth advance.

n=The number of unit-periods between consummation and repayment of the debt.

$P_n$=Min ($Bal_n$, $Val_n$). This is the maximum amount that the creditor can be repaid at the specified loan term.

$Bal_n$=Loan balance at time of repayment, including all costs and fees incurred by the consumer (including any shared appreciation or shared equity amount) compounded to time n at the creditor's contract rate of interest.

$Val_n$=$Val_0 (1 + \sigma)^y$, where $Val_0$ is the property value at consummation, σ is the assumed annual rate of appreciation for the dwelling, and y is the number of years in the assumed term. $Val_n$ must be reduced by the amount of any equity reserved for the consumer by agreement between the parties, or by 7 percent (or the amount or percentage specified in the credit agreement), if the amount required to be repaid is limited to the net proceeds of sale.

σ = The summation operator.

Symbols used in the examples shown in this appendix are defined as follows:

$FV_{x\neg}i$ = The future value of 1 per unit period for x unit periods, first advance due immediately (at time = 0, which is consummation).

$$= \sum_{j=0}^{x-1} (1+i)^{x-j}$$

$$= (1+i)^{x} + (1+i)^{x-1} + \cdots (1+i)^{1}; \text{ or}$$

$$= \frac{(1+i)^{n}-1}{i} \times (1+i)$$

w=The number of unit-periods per year.

I=wi×100=the nominal total annual loan cost rate.

(7) *General equation.* The total annual loan cost rate for a reverse mortgage transaction must be determined by first solving the following formula, which sets forth the relationship between the advances to the consumer and the amount owed to the creditor under the terms of the reverse mortgage agreement for the loan cost rate per unit-period (the loan cost rate per unit-period is then multiplied by the number of unit-periods per year to obtain the total annual loan cost rate I; that is, I = wi):

$$\sum_{j=0}^{n-1} A_j(1+i)^{n-j} = P_n$$

(8) *Solution of general equation by iteration process.* (i) The general equation in paragraph (b)(7) of this appendix, when applied to a simple transaction for a reverse mortgage loan of equal monthly advances of $350 each, and with a total amount owed of $14,313.08 at an assumed repayment period of two years, takes the special form:

$$P_n = 350\ FV_{24\neg}\ i, \text{ or}$$

$$P_n = 350 \times \left[ \frac{(1+i)^{n}-1}{i} \times (1+i) \right]$$

Using the iteration procedures found in steps 1 through 4 of (b)(9)(i) of Appendix J of this part, the total annual loan cost rate, correct to two decimals, is 48.53%.

(ii) In using these iteration procedures, it is expected that calculators or computers will be programmed to carry all available decimals throughout the calculation and that enough iterations will be performed to make virtually certain that the total annual loan cost rate obtained, when rounded to two decimals, is correct. Total annual loan cost rates in the examples below were obtained by using a 10-digit programmable calculator and the iteration procedure described in Appendix J of this part.

(9) *Assumption for discretionary cash advances.* If the consumer controls the timing of advances made after consummation (such as in a credit line arrangement), the creditor must use the general formula in paragraph (b)(7) of this appendix. The total annual loan cost rate shall be based on the assumption that 50 percent of the principal loan amount is advanced at closing, or in the case of an open-end transaction, at the time the consumer becomes obligated under the plan. Creditors shall assume the advances are made at the interest rate then in effect and that no further advances are made to, or repayments made by, the consumer during the term of the transaction or plan.

(10) *Assumption for variable-rate reverse mortgage transactions.* If the interest rate for a reverse mortgage transaction may increase during the loan term and the amount or timing is not known at consummation, creditors shall base the disclosures on the initial interest rate in effect at the time the disclosures are provided.

(11) *Assumption for closing costs.* In calculating the total annual loan cost rate, creditors shall assume all closing and other consumer costs are financed by the creditor.

(c) *Examples of total annual loan cost rate computations*—(1) *Lump-sum advance at consummation.*

Lump-sum advance to consumer at consummation: $30,000

Total of consumer's loan costs financed at consummation: $4,500

Contract interest rate: 11.60%

Estimated time of repayment (based on life expectancy of a consumer at age 78): 10 years

Appraised value of dwelling at consummation: $100,000

Assumed annual dwelling appreciation rate: 4%

$P_{10}$ = Min (103,385.84, 137,662.72)

$$30{,}000(1+i)^{10-0}+\sum_{j=0}^{9}0(1+i)^{10-j}=103{,}385.84$$

i = .1317069438
Total annual loan cost rate (100(.1317069438 × 1)) = 13.17%

(2) *Monthly advance beginning at consummation.*

Monthly advance to consumer, beginning at consummation: $492.51
Total of consumer's loan costs financed at consummation: $4,500
Contract interest rate: 9.00%
Estimated time of repayment (based on life expectancy of a consumer at age 78): 10 years
Appraised value of dwelling at consummation: $100,000
Assumed annual dwelling appreciation rate: 8%

$$P_{120}=\text{Min}\ (107{,}053.63,\ 200{,}780.02)$$

$$492.51\times\left[\frac{(1+i)^{120}-1}{i}\times(1+i)\right]=107{,}053.63$$

$$i=.009061140$$

Total annual loan cost rate (100(.009061140 × 12))=10.87%

(3) *Lump sum advance at consummation and monthly advances thereafter.*

Lump sum advance to consumer at consummation: $10,000
Monthly advance to consumer, beginning at consummation: $725
Total of consumer's loan costs financed at consummation: $4,500
Contract rate of interest: 8.5%
Estimated time of repayment (based on life expectancy of a consumer at age 75): 12 years
Appraised value of dwelling at consummation: $100,000
Assumed annual dwelling appreciation rate: 8%

$$P_{144}=\text{Min}\ (221{,}818.30,\ 234{,}189.82)$$

$$10{,}000(1+i)^{144-0}+\sum_{j=0}^{143}725(1+i)^{144-j}=221{,}818.30$$

$$i=.007708844$$

Total annual loan cost rate (100(.007708844 × 12)) = 9.25%

(d) *Reverse mortgage model form and sample form*—(1) *Model form.*

TOTAL ANNUAL LOAN COST RATE

*Loan Terms*

Age of youngest borrower:
Appraised property value:
Interest rate:
Monthly advance:
Initial draw:
Line of credit:

*Initial Loan Charges*

Closing costs:
Mortgage insurance premium:
Annuity cost:

*Monthly Loan Charges*

Servicing fee:

*Other Charges:*

Mortgage insurance:
Shared Appreciation:

*Repayment Limits*

| Assumed annual appreciation | Total annual loan cost rate | | | |
|---|---|---|---|---|
| | 2-year loan term | [ ]-year loan term] | [ ]-year loan term | [ ]-year loan term |
| 0% | | [ ] | | |
| 4% | | [ ] | | |
| 8% | | [ ] | | |

The cost of any reverse mortgage loan depends on how long you keep the loan and how much your house appreciates in value. Generally, the longer you keep a reverse mortgage, the lower the total annual loan cost rate will be.

This table shows the estimated cost of your reverse mortgage loan, expressed as an annual rate. It illustrates the cost for three [four] loan terms: 2 years, [half of life expectancy for someone your age,] that life expectancy, and 1.4 times that life expectancy. The table also shows the cost of the loan, assuming the value of your home appreciates at three different rates: 0%, 4% and 8%.

The total annual loan cost rates in this table are based on the total charges associated with this loan. These charges typically include principal, interest, closing costs, mortgage insurance premiums, annuity costs, and servicing costs (but not costs when you sell the home).

The rates in this table are estimates. Your actual cost may differ if, for example, the amount of your loan advances varies or the interest rate on your mortgage changes.

SIGNING AN APPLICATION OR RECEIVING THESE DISCLOSURES DOES NOT REQUIRE YOU TO COMPLETE THIS LOAN

(2) Sample Form.

TOTAL ANNUAL LOAN COST RATE

*Loan Terms*

Age of youngest borrower: 75
Appraised property value: $100,000
Interest rate: 9%
Monthly advance: $301.80
Initial draw: $1,000
Line of credit: $4,000

*Initial Loan Charges*

Closing costs: $5,000
Mortgage insurance premium: None
Annuity cost: None

*Monthly Loan Charges*

Servicing fee: None

*Other Charges*

Mortgage insurance: None
Shared Appreciation: None

*Repayment Limits*

Net proceeds estimated at 93% of projected home sale

| Assumed annual appreciation | Total annual loan cost rate | | | |
|---|---|---|---|---|
| | 2-year loan term | [6-year loan term] | 12-year loan term | 17-year loan term |
| 0% | 39.00% | [14.94%] | 9.86% | 3.87% |
| 4% | 39.00% | [14.94%] | 11.03% | 10.14% |
| 8% | 39.00% | [14.94%] | 11.03% | 10.20% |

The cost of any reverse mortgage loan depends on how long you keep the loan and how much your house appreciates in value. Generally, the longer you keep a reverse mortgage, the lower the total annual loan cost rate will be.

This table shows the estimated cost of your reverse mortgage loan, expressed as an annual rate. It illustrates the cost for three [four] loan terms: 2 years, [half of life expectancy for someone your age,] that life expectancy, and 1.4 times that life expectancy. The table also shows the cost of the loan, assuming the value of your home appreciates at three different rates: 0%,4% and 8%.

The total annual loan cost rates in this table are based on the total charges associated with this loan. These charges typically include principal, interest, closing costs, mortgage insurance premiums, annuity costs, and servicing costs (but not disposition costs—costs when you sell the home).

The rates in this table are estimates. Your actual cost may differ if, for example, the amount of your loan advances varies or the interest rate on your mortgage changes.

SIGNING AN APPLICATION OR RECEIVING THESE DISCLOSURES DOES NOT REQUIRE YOU TO COMPLETE THIS LOAN

[Reg. Z, 60 FR 15474, Mar. 24, 1995, as amended at 60 FR 50400, Sept. 29, 1995]

## APPENDIX L TO PART 226—ASSUMED LOAN PERIODS FOR COMPUTATIONS OF TOTAL ANNUAL LOAN COST RATES

(a) *Required tables.* In calculating the total annual loan cost rates in accordance with Appendix K of this part, creditors shall assume three loan periods, as determined by the following table.

(b) *Loan periods.*

(1) Loan Period 1 is a two-year loan period.

(2) Loan Period 2 is the life expectancy in years of the youngest borrower to become obligated on the reverse mortgage loan, as shown in the U.S. Decennial Life Tables for 1979–1981 for females, rounded to the nearest whole year.

(3) Loan Period 3 is the life expectancy figure in Loan Period 3, multiplied by 1.4 and rounded to the nearest full year (life expectancy figures at .5 have been rounded up to 1).

(4) At the creditor's option, an additional period may be included, which is the life expectancy figure in Loan Period 2, multiplied by .5 and rounded to the nearest full year (life expectancy figures at .5 have been rounded up to 1).

| Age of youngest borrower | Loan period 1 (in years) | [Optional loan period (in years)] | Loan period 2 (life expectancy) (in years) | Loan period 3 (in years) |
|---|---|---|---|---|
| 62 | 2 | [11] | 21 | 29 |
| 63 | 2 | [10] | 20 | 28 |
| 64 | 2 | [10] | 19 | 27 |
| 65 | 2 | [9] | 18 | 25 |
| 66 | 2 | [9] | 18 | 25 |
| 67 | 2 | [9] | 17 | 24 |
| 68 | 2 | [8] | 16 | 22 |
| 69 | 2 | [8] | 16 | 22 |
| 70 | 2 | [8] | 15 | 21 |
| 71 | 2 | [7] | 14 | 20 |
| 72 | 2 | [7] | 13 | 18 |
| 73 | 2 | [7] | 13 | 18 |
| 74 | 2 | [6] | 12 | 17 |
| 75 | 2 | [6] | 12 | 17 |
| 76 | 2 | [6] | 11 | 15 |
| 77 | 2 | [5] | 10 | 14 |
| 78 | 2 | [5] | 10 | 14 |
| 79 | 2 | [5] | 9 | 13 |
| 80 | 2 | [5] | 9 | 13 |
| 81 | 2 | [4] | 8 | 11 |
| 82 | 2 | [4] | 8 | 11 |
| 83 | 2 | [4] | 7 | 10 |
| 84 | 2 | [4] | 7 | 10 |
| 85 | 2 | [3] | 6 | 8 |
| 86 | 2 | [3] | 6 | 8 |
| 87 | 2 | [3] | 6 | 8 |
| 88 | 2 | [3] | 5 | 7 |
| 89 | 2 | [3] | 5 | 7 |
| 90 | 2 | [3] | 5 | 7 |
| 91 | 2 | [2] | 4 | 6 |
| 92 | 2 | [2] | 4 | 6 |
| 93 | 2 | [2] | 4 | 6 |
| 94 | 2 | [2] | 4 | 6 |
| 95 and over | 2 | [2] | 3 | 4 |

[60 FR 15476, Mar. 24, 1995]

## SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

### INTRODUCTION

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation Z, as revised effective April 1, 1981. Good faith compliance with this commentary affords protection from liability under 130(f) of the Truth in Lending Act. Section 130(f) (15 U.S.C. 1640) protects creditors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedure for requesting interpretations.* Under appendix C of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the FEDERAL REGISTER. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Status of previous interpretations.* All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until October 1, 1982, only insofar as they interpret that regulation. When compliance with revised Regulation Z becomes mandatory on October 1, 1982, the Board and staff interpretations of the previous regulation will be entirely superseded by the revised regulation and this commentary except with regard to liability under the previous regulation.

4. *Rules of construction.* (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as ''including, but not limited to,'' ''among other things,'' ''for example,'' or ''such as.''

(b) Throughout the commentary and regulation, reference to the regulation should be construed to refer to revised Regulation Z, unless the context indicates that a reference to previous Regulation Z is also intended.

(c) Throughout the commentary, reference to ''this section'' or ''this paragraph'' means the section or paragraph in the regulation that is the subject of the comment.

5. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph which it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to §226.18(b) are further divided by paragraph, such as Comment 18(b)(1)–1 and Comment 18(b)(2)–1. In other cases, comments have more general application and are designated, for example, as Comment 18–1 or Comment 18(b)–1. This introduction may be cited as Comments I–1 through I–7. Comments to the appendices may be cited, for example, as Comment app. A–1.

6. *Cross-references.* The following cross-references to related material appear at the end of each section of the commentary:

(a) ''Statute''—those sections of the Truth in Lending Act on which the regulatory provision is based (and any other relevant statutes);

(b) ''Other sections''—other provisions in the regulation necessary to understand that section;

(c) ''Previous regulation''—parallel provisions in previous Regulation Z; and

(d) ''1981 changes''—a brief description of the major changes made by the 1981 revisions to Regulation Z.

Where appropriate a fifth category (''Other regulations'') provides cross-references to other regulations.

7. *Transition rules.* (a) Though compliance with the revised regulation is not mandatory until April 1, 1982, creditors may begin complying as of April 1, 1981. During the intervening year, a creditor may convert its entire operation to the new requirements at one time, or it may convert to the new requirements in stages. In general, however, a creditor may not mix the regulatory requirements when making disclosures for a particular closed-end transaction or open-end account; all the disclosures for a single closed-end transaction (or open-end account) must be made in accordance with the previous regulation, or all the disclosures must be made in accordance with the revised regulation. As an exception to the general rule, the revised rescission rules and the revised advertising rules may be followed even if the disclosures are based on the previous regulation. For purposes of this regulation, the creditor is not required to take any particular action beyond the requirements of the revised regulation to indicate its conversion to the revised regulation.

(b) The revised regulation may be relied on to determine if any disclosures are required for a particular transaction or to determine if a person is a *creditor* subject to Truth in Lending requirements, whether or not other operations have been converted to the revised regulation. For example, layaway plans are not subject to the revised regulation, nor are oral agreements to lend money if there is no finance charge. These provisions may be relied on even if the creditor is making other disclosures under the previous regulation. The new rules governing whether or not disclosures must be made for refinancings and assumptions are also available to a creditor that has not yet converted its operations to the revised regulation.

(c) In addition to the above rules, applicable to both open-end and closed-end credit, the following guidelines are relevant to open-end credit:

- The creditor need not remake initial disclosures that were made under the previous regulation, even if the revised periodic statements contain terminology that is inconsistent with those initial disclosures.
- A creditor may add inserts to its old open-end forms in order to convert them to the revised rules until such time as the old forms are used up.
- No change-in-terms notice is required for changes resulting from the conversion to the revised regulation.

• The previous billing rights statements are substantially similar to the revised billing rights statements and may continue to be used, except that, if the creditor has an automatic debit program, it must use the revised automatic debit provision.

• For those creditors wishing to use the annual billing rights statement, the creditor may count from the date on which it sent its last statement under the previous regulation in determining when to give the first statement under the new regulation. For example, if the creditor sent a semi-annual statement in June 1981, and converts to the new regulation in October 1981, the creditor must give the billing rights statement sometime in 1982, and it must not be fewer than 6 nor more than 18 months after the June statement.

• Section 226.11 of the revised regulation affects only credit balances that are created on or after the date the creditor converts the account to the revised regulation.

SUBPART A—GENERAL

*Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability*

*1(c) Coverage.*

1. *Foreign applicability.* Regulation Z applies to all persons (including branches of foreign banks and sellers located in the United States) that extend consumer credit to residents (including resident aliens) of any state as defined in §226.2. If an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to the regulation. This will be the case whether or not a particular advance or purchase on the account takes place in the United States and whether or not the extender of credit is chartered or based in the United States or a foreign country. Thus, a U.S. resident's use in Europe of a credit card issued by a bank in the consumer's home town is covered by the regulation. The regulation does not apply to a foreign branch of a U.S. bank when the foreign branch extends credit to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

References

*Statute:* Section 102.

*Other sections:* None.

*Previous regulation:* §226.1.

*1981 changes:* A discussion of coverage has been added to §226.1 so that the reader will understand from the start what is subject to the regulation. Language has also been added to explain the reorganization of the regulation into subparts that group together the provisions relating to general matters, open-end credit, closed-end credit, and miscellaneous rules. The provisions on consumer leasing have been issued by the Board as a separate regulation, Regulation M (12 CFR part 213).

*Section 226.2—Definitions and Rules of Construction*

*2(a) Definitions.*

*2(a)(2) Advertisement.*

1. *Coverage.* Only commercial messages that promote consumer credit transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of credit transactions, whether in visual, oral, or print media, are covered by Regulation Z (12 CFR part 226).

i. Examples include:

A. Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.

B. Announcements on radio, television, or public address system.

C. On-line messages, such as on the Internet.

D. Direct mail literature or other printed material on any exterior or interior sign.

E. Point-of-sale displays.

F. Telephone solicitations.

G. Price tags that contain credit information.

H. Letters sent to customers as part of an organized solicitation of business.

I. Messages on checking account statements offering auto loans at a stated annual percentage rate.

J. Communications promoting a new open-end plan or closed-end transaction.

ii. The term does *not* include:

A. Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.

B. Informational material, for example, interest rate and loan term memos, distributed only to business entities.

C. Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

D. News articles the use of which is controlled by the news medium.

E. Market research or educational materials that do not solicit business.

F. Communications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account).

2. *Persons covered.* All *persons* must comply with the advertising provisions in §§226.16 and 226.24, not just those that meet the definition of creditor in §226.2(a)(17). Thus, home builders, merchants, and others who are not themselves creditors must comply with the advertising provisions of the regulation if they advertise consumer credit transactions. However, under section 145 of the act, the owner and the personnel of the medium, in which an advertisement appears, or through which it is disseminated, are not subject to civil liability for violations.

*2(a)(3) [Reserved]*

*2(a)(4) Billing cycle or cycle.*

1. *Intervals.* In open-end credit plans, the billing cycle determines the intervals for which periodic disclosure statements are required; these intervals are also used as measuring points for other duties of the creditor. Typically, billing cycles are monthly, but they may be more frequent or less frequent (but not less frequent than quarterly).

2. *Creditors that do not bill.* The term *cycle* is interchangeable with *billing cycle* for definitional purposes, since some creditors' cycles do not involve the sending of bills in the traditional sense but only statements of account activity. This is commonly the case with financial institutions when periodic payments are made through payroll deduction or through automatic debit of the consumer's asset account.

3. *Equal cycles.* Although cycles must be equal, there is a permissible variance to account for weekends, holidays, and differences in the number of days in months. If the actual date of each statement does not vary by more than 4 days from a fixed *day* (for example, the third Thursday of each month) or *date* (for example, the 15th of each month) that the creditor regularly uses, the intervals between statements are considered equal. The requirement that cycles be equal applies even if the creditor applies a daily periodic rate to determine the finance charge. The requirement that intervals be equal does not apply to the transitional billing cycle that can occur when the creditor occasionally changes its billing cycles so as to establish a new statement day or date. (See the commentary to §226.9(c).)

4. *Payment reminder.* The sending of a regular payment reminder (rather than a late payment notice) establishes a cycle for which the creditor must send periodic statements.

*2(a)(6) Business day.*

1. *Business function test.* Activities that indicate that the creditor is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle credit transaction inquiries. Activities that indicate that the creditor is not open for substantially all of its business functions include a retailer merely accepting credit cards for purchases or a bank having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

2. *Rescission rule.* A more precise rule for what is a business day (all calendar days except Sundays and the federal legal holidays listed in 5 U.S.C. 6103(a)) applies when the right of rescission or mortgages subject to §226.32 are involved. (See also comment 31(c)(1)–1.) Four federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, federal offices and other entities might observe the holiday on the preceding Friday (July 3). The observed holiday (in the example, July 3) is a business day for purposes of rescission or the delivery of disclosures for certain high-cost mortgages covered by §226.32.

*2(a)(7) Card issuer.*

1. *Agent.* An agent of a card issuer is considered a card issuer. Because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

*2(a)(8) Cardholder.*

1. *General rule.* A cardholder is a natural person at whose request a card is issued for consumer credit purposes or who is a co-obligor or guarantor for such a card issued to another. The second category does not include an employee who is a co-obligor or guarantor on a card issued to the employer for business purposes, nor does it include a person who is merely the authorized user of a card issued to another.

2. *Limited application of regulation.* For the limited purposes of the rules on issuance of credit cards and liability for unauthorized use, a cardholder includes *any* person, including an organization, to whom a card is issued for *any* purpose—including a business, agricultural, or commercial purpose.

3. *Issuance.* See the commentary to §226.12(a).

4. *Dual-purpose cards and dual-card systems.* Some card issuers offer dual-purpose cards that are for business as well as consumer purposes. If a card is issued to an individual for consumer purposes, the fact that an organization has guaranteed to pay the debt does not make it business credit. On the other hand, if a card is issued for business purposes, the fact that an individual sometimes uses it for consumer purchases does not subject the card issuer to the provisions on periodic statements, billing error resolution, and other protections afforded to consumer credit. Some card issuers offer dual-card systems—that is, they issue two cards to the same individual, one intended for business use, the other for consumer or personal use. With such a system, the same person may be a cardholder for general purposes when using the card issued for consumer use, and a cardholder only for the limited purposes of the

restrictions on issuance and liability when using the card issued for business purposes.

*2(a)(9) Cash price.*

1. *Components.* This amount is a starting point in computing the amount financed and the total sale price under §226.18 for credit sales. Any charges imposed equally in cash and credit transactions may be included in the cash price, or they may be treated as other amounts financed under §226.18(b)(2).

2. *Service contracts.* Service contracts include contracts for the repair or the servicing of goods, such as mechanical breakdown coverage, even if such a contract is characterized as insurance under state law.

3. *Rebates.* The creditor has complete flexibility in the way it treats rebates for purposes of disclosure and calculation. See the commentary to §226.18(b).

*2(a)(10) Closed-end credit.*

1. *General.* The coverage of this term is defined by exclusion. That is, it includes any credit arrangement that does not fall within the definition of open-end credit. Subpart C contains the disclosure rules for closed-end credit when the obligation is subject to a finance charge or is payable by written agreement in more than 4 installments.

*2(a)(11) Consumer.*

1. *Scope.* Guarantors, endorsers, and sureties are not generally consumers for purposes of the regulation, but they may be entitled to rescind under certain circumstances and they may have certain rights if they are obligated on credit card plans.

2. *Rescission rules.* For purposes of rescission under §§226.15 and 226.23, a consumer includes any natural person whose ownership interest in his or her principal dwelling is subject to the risk of loss. Thus, if a security interest is taken in A's ownership interest in a house and that house is A's principal dwelling, A is a consumer for purposes of rescission, even if A is not liable, either primarily or secondarily, on the underlying consumer credit transaction. An ownership interest does not include, for example, leaseholds or inchoate rights, such as dower.

3. *Land trusts.* Credit extended to land trusts, as described in the commentary to §226.3(a), is considered to be extended to a natural person for purposes of the definition of consumer.

*2(a)(12) Consumer credit.*

1. *Primary purpose.* There is no precise test for what constitutes credit offered or extended for personal, family, or household purposes, nor for what constitutes the primary purpose. See, however, the discussion of business purposes in the commentary to §226.3(a).

*2(a)(13) Consummation.*

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit v. sale.* Consummation does not occur when the consumer becomes contractually committed to a *sale* transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. For example, when a consumer pays a nonrefundable deposit to purchase an automobile, a purchase contact may be created, but consummation for purposes of the regulation does not occur unless the consumer also contracts for financing at that time.

*2(a)(14) Credit.*

1. *Exclusions.* The following situations are not considered credit for purposes of the regulation:

• Layaway plans, unless the consumer is contractually obligated to continue making payments. Whether the consumer is so obligated is a matter to be determined under applicable law. The fact that the consumer is not entitled to a refund of any amounts paid towards the cash price of the merchandise does not bring layaways within the definition of credit.

• Tax liens, tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy. However, third-party financing of such obligations (for example, a bank loan obtained to pay off a tax lien) is credit for purposes of the regulation.

• Insurance premium plans that involve payment in installments with each installment representing the payment for insurance coverage for a certain future period of time, unless the consumer is contractually obligated to continue making payments.

• Home improvement transactions that involve progress payments, if the consumer pays, as the work progresses, only for work completed and has no contractual obligation to continue making payments.

• *Borrowing* against the accrued cash value of an insurance policy or a pension account, if there is no independent obligation to repay.

• Letters of credit.

• The execution of option contracts. However, there may be an extension of credit when the option is exercised, if there is an agreement at that time to defer payment of a debt.

• Investment plans in which the party extending capital to the consumer risks the loss of the capital advanced. This includes, for example, an arrangement with a home purchaser in which the investor pays a portion of the downpayment and of the periodic mortgage payments in return for an ownership interest in the property, and shares in any gain or loss of property value.

• Mortgage assistance plans administered by a government agency in which a portion of the consumer's monthly payment amount is paid by the agency. No finance charge is imposed on the subsidy amount and that amount is due in a lump-sum payment on a set date or upon the occurrence of certain events. (If payment is not made when due, a new note imposing a finance charge may be written, which may then be subject to the regulation.)

2. *Payday loans; deferred presentment.* Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a "payday loan" or "payday advance" or "deferred presentment loan." A fee charged in connection with such a transaction may be a finance charge for purposes of §226.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under §226.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. See §226.2(a)(17).

*2(a)(15) Credit card.*

1. *Usable from time to time.* A credit card must be usable from time to time. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

2. *Examples.* i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.

B. A card that accesses both a credit and an asset account (that is, a debit-credit card).

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

E. A card or device that can be activated upon receipt to access credit, even if the card has a substantive use other than credit, such as a purchase-price discount card. Such a card or device is a credit card notwithstanding the fact that the recipient must first contact the card issuer to access or activate the credit feature.

ii. In contrast, a credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

3. *Charge card.* Generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. Under the regulation, a reference to credit cards generally includes charge cards. The term *charge card* is, however, distinguished from *credit card* in §§226.5a, 226.9(e), 226.9(f), and 226.28(d), and appendices G–10 through G–13. When the term *credit card* is used in those provisions, it refers to credit cards other than charge cards.

*2(a)(16) Credit sale.*

1. *Special disclosure.* If the seller is a creditor in the transaction, the transaction is a credit sale and the special credit sale disclosures (that is, the disclosures under §226.18(j)) must be given. This applies even if there is more than one creditor in the transaction and the creditor making the disclosures is not the seller. See the commentary to §226.17(d).

2. *Sellers who arrange credit.* If the seller of the property or services involved arranged for financing but is not a creditor as to that sale, the transaction is not a credit sale. Thus, if a seller assists the consumer in obtaining a direct loan from a financial institution and the consumer's note is payable to the financial institution, the transaction is a loan and only the financial institution is a creditor.

3. *Refinancings.* Generally, when a credit sale is refinanced within the meaning of §226.20(a), loan disclosures should be made. However, if a new sale of goods or services is also involved, the transaction is a credit sale.

4. *Incidental sales.* Some lenders *sell* a product or service—such as credit, property, or health insurance—as part of a loan transaction. Section 226.4 contains the rules on whether the cost of credit life, disability or property insurance is part of the finance charge. If the insurance is financed, it may be disclosed as a separate credit sale transaction or disclosed as part of the primary transaction; if the latter approach is taken, either loan or credit sale disclosures may be made. See the commentary to §226.17(c)(1) for further discussion of this point.

5. *Credit extensions for educational purposes.* A credit extension for educational purposes in which an educational institution is the creditor may be treated as either a credit sale or a loan, regardless of whether the funds are given directly to the student, credited to the student's account, or disbursed to other persons on the student's behalf. The disclosure of the total sale price need not be given if the transaction is treated as a loan.

*2(a)(17) Creditor.*

1. *General.* The definition contains four independent tests. If any one of the tests is met, the person is a creditor for purposes of that particular test.

*Paragraph 2(a)(17)(i).*

1. *Prerequisites.* This test is composed of 2 requirements, both of which must be met in order for a particular credit extension to be subject to the regulation and for the credit extension to count towards satisfaction of the numerical tests mentioned in footnote 3 to §226.2(a)(17). *First,* there must be either or both of the following:

• A written (rather than oral) agreement to pay in more than 4 installments. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of the definition.

• A finance charge imposed for the credit. The obligation to pay the finance charge need not be in writing.

*Second,* the obligation must be payable to the person in order for that person to be considered a creditor. If an obligation is made payable to *bearer,* the creditor is the one who initially accepts the obligation.

2. *Assignees.* If an obligation is initially payable to one person, that person is the creditor even if the obligation by its terms is simultaneously assigned to another person. For example:

• An auto dealer and a bank have a business relationship in which the bank supplies the dealer with credit sale contracts that are initially made payable to the dealer and provide for the immediate assignment of the obligation to the bank. The dealer and purchaser execute the contract only after the bank approves the creditworthiness of the purchaser. Because the obligation is initially payable on its face to the dealer, the dealer is the only creditor in the transaction.

3. *Numerical tests.* The examples below illustrate how the numerical tests of footnote 3 are applied. The examples assume that consumer credit with a finance charge or written agreement for more than 4 installments was extended in the years in question and that the person did not extend such credit in 1982.

4. *Counting transactions.* For purposes of closed-end credit, the creditor counts each credit transaction. For open-end credit, *transactions* means accounts, so that outstanding accounts are counted instead of individual credit extensions. Normally the number of transactions is measured by the preceding calendar year; if the requisite number is met, then the person is a creditor for all transactions in the current year. However, if the person did not meet the test in the preceding year, the number of transactions is measured by the current calendar year. For example, if the person extends consumer credit 26 times in 1983, it is a creditor for purposes of the regulation for the last extension of credit in 1983 and for all extensions of consumer credit in 1984. On the other hand, if a business begins in 1983 and extends consumer credit 20 times, it is not a creditor for purposes of the regulation in 1983. If it extends consumer credit 75 times in 1984, however, it becomes a creditor for purposes of the regulation (and must begin making disclosures) after the 25th extension of credit in that year and is a creditor for all extensions of consumer credit in 1985.

5. *Relationship between consumer credit in general and credit secured by a dwelling.* Extensions of credit secured by a dwelling are counted towards the 25-extensions test. For example, if in 1983 a person extends unsecured consumer credit 23 times and consumer credit secured by a dwelling twice, it becomes a creditor for the succeeding extensions of credit, whether or not they are secured by a dwelling. On the other hand, extensions of consumer credit not secured by a dwelling are *not* counted towards the number of credit extensions secured by a dwelling. For example, if in 1983 a person extends credit not secured by a dwelling 8 times and credit secured by a dwelling 3 times, it is not a creditor.

6. *Effect of satisfying one test.* Once one of the numerical tests is satisfied, the person is also a creditor for the other type of credit. For example, in 1983 a person extends consumer credit secured by a dwelling 5 times. That person is a creditor for all succeeding credit extensions, whether they involve credit secured by a dwelling or not.

7. *Trusts.* In the case of credit extended by trusts, each individual trust is considered a separate entity for purposes of applying the criteria. For example:

• A bank is the trustee for 3 trusts: Trust A makes 15 extensions of consumer credit annually; Trust B makes 10 extensions of consumer credit annually; and Trust C makes 30 extensions of consumer credit annually. Only Trust C is a creditor for purposes of the regulation.

8. *Loans from employee savings plan.* Some employee savings plans permit participants to borrow money up to a certain percentage of their account balances, and use a trust to administer the receipt and disbursement of funds. Unless each participant's account is an individual plan and trust, the creditor should apply the numerical tests to the plan as a whole rather than to the individual account, even if the loan amount is determined

by reference to the balance in the individual account and the repayments are credited to the individual account. The person to whom the obligation is originally made payable (whether the plan, the trust, or the trustee) is the creditor for purposes of the act and regulation.

*Paragraph 2(a)(17)(ii).* [Reserved]

*Paragraph 2(a)(17)(iii).*

1. *Card issuers subject to Subpart B.* Section 226.2(a)(17)(iii) makes certain card issuers creditors for purposes of the open-end credit provisions of the regulation. This includes, for example, the issuers of so-called travel and entertainment cards that expect repayment at the first billing and do not impose a finance charge. Since all disclosures are to be made only as applicable, such card issuers would omit finance charge disclosures. Other provisions of the regulation regarding such areas as scope, definitions, determination of which charges are finance charges, Spanish language disclosures, record retention, and use of model forms, also apply to such card issuers.

*Paragraph 2(a)(17)(iv).*

1. *Card issuers subject to Subparts B and C.* Section 226.2(a)(17)(iv) includes as creditors card issuers extending closed-end credit in which there is a finance charge or an agreement to pay in more than 4 installments. These card issuers are subject to the appropriate provisions of Subparts B and C, as well as to the general provisions.

*2(a)(18) Downpayment.*

1. *Allocation.* If a consumer makes a lump-sum payment, partially to reduce the cash price and partially to pay prepaid finance charges, only the portion attributable to reducing the cash price is part of the downpayment. (See the commentary to §226.2(a)(23).)

2. *Pick-up payments.* Creditors may treat the deferred portion of the down-payment, often referred to as *pick-up payments*, in a number of ways. If the pick-up payment is treated as part of the downpayment:

• It is subtracted in arriving at the amount financed under §226.18(b).

• It may, but need not, be reflected in the payment schedule under §226.18(g).

If the pick-up payment does not meet the definition (for example, if it is payable after the second regularly scheduled payment) or if the creditor chooses not to treat it as part of the downpayment:

• It must be included in the amount financed.

• It must be shown in the payment schedule.

Whichever way the pick-up payment is treated, the total of payments under §226.18(h) must equal the sum of the payments disclosed under §226.18(g).

3. *Effect of existing liens.* i. *No cash payment.* In a credit sale, the ''downpayment'' may only be used to reduce the cash price. For example, when a trade-in is used as the downpayment and the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not −$2,000.

ii. *Cash payment.* If the consumer makes a cash payment, creditors may, at their option, disclose the entire cash payment as the downpayment, or apply the cash payment first to any excess lien amount and disclose any remaining cash as the downpayment. In the above example:

A. If the downpayment disclosed is equal to the cash payment, the $2,000 deficit must be reflected as an additional amount financed under §226.18(b)(2).

B. If the consumer provides $1,500 in cash (which does not extinguish the $2,000 deficit), the creditor may disclose a downpayment of $1,500 or of $0.

C. If the consumer provides $3,000 in cash, the creditor may disclose a downpayment of $3,000 or of $1,000.

*2(a)(19) Dwelling.*

1. *Scope.* A dwelling need not be the consumer's *principal* residence to fit the definition and thus a vacation or second home could be a dwelling. However, for purposes of the definition of residential mortgage transaction and the right to rescind, a dwelling must be the principal residence of the consumer. See the commentary to §§226.2(a)(24), 226.15, and 226.23.

2. *Use as a residence.* Mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers, and the like not used as residences are not dwellings.

3. *Relation to exemptions.* Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in §226.3(b) for credit extensions over $25,000.

*2(a)(20) Open-end credit.*

1. *General.* This definition describes the characteristics of open-end credit (for which the applicable disclosure and other rules are contained in Subpart B), as distinct from closed-end credit. Open-end credit is consumer credit that is extended under a plan and meets *all 3* criteria set forth in the definition.

2. *Existence of a plan.* The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be

accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multi-featured plan.

3. *Repeated transactions.* Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with consumers under the credit plan as a whole and need not believe a consumer will reuse a particular feature of the plan. The determination of whether a creditor can reasonably contemplate repeated transactions requires an objective analysis. Information that much of the creditor's customer base with accounts under the plan make repeated transactions over some period of time is relevant to the determination, particularly when the plan is opened primarily for the financing of infrequently purchased products or services. A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that particular consumers do not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with its customers. For example:

i. It would be more reasonable for a thrift institution chartered for the benefit of its members to contemplate repeated transactions with a member than for a seller of aluminum siding to make the same assumption about its customers.

ii. It would be more reasonable for a financial institution to make advances from a line of credit for the purchase of an automobile than for an automobile dealer to sell a car under an open-end plan.

4. *Finance charge on an outstanding balance.* The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, such as certain *china club* plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

5. *Reusable line.* The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. The creditor may verify credit information such as the consumer's continued income and employment status or information for security purposes. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a close-end credit loan commitment. For example:

- Under a closed-end commitment, the creditor might agree to lend a total of $10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $10,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt.

This criterion does not mean that the creditor must establish a specific credit limit for the line of credit or that the line of credit must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in the economy, the creditor's financial condition, or the consumer's creditworthiness. (The rules in §226.5b(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.) While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any preset credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion.

6. *Open-end real estate mortgages.* Some credit plans call for negotiated advances under so-called open-end real estate mortgages. Each such plan must be independently measured against the definition of open-end credit, regardless of the terminology used in the industry to describe the plan. The fact

that a particular plan is called an open-end real estate mortgage, for example, does not, by itself, mean that it is open-end credit under the regulation.

*2(a)(21) Periodic rate.*

1. *Basis.* The periodic rate may be stated as a percentage (for example, 1½% per month) or as a decimal equivalent (for example, .015 monthly). It may be based on any portion of a year the creditor chooses. Some creditors use 1⁄360 of an annual rate as their periodic rate. These creditors:

- May disclose a 1⁄360 rate as a *daily* periodic rate, without further explanation, if it is in fact only applied 360 days per year. But if the creditor applies that rate for 365 days, the creditor must note that fact and, of course, disclose the true annual percentage rate.
- Would have to apply the rate to the balance to disclose the annual percentage rate with the degree of accuracy required in the regulation (that is, within 1⁄8 of 1 percentage point of the rate based on the actual 365 days in the year).

2. *Transaction charges. Periodic rate* does not include initial one-time transaction charges, even if the charge is computed as a percentage of the transaction amount.

*2(a)(22) Person.*

1. *Joint ventures.* A joint venture is an organization and is therefore a person.

2. *Attorneys.* An attorney and his or her client are considered to be the same person for purposes of this regulation when the attorney is acting within the scope of the attorney-client relationship with regard to a particular transaction.

3. *Trusts.* A trust and its trustee are considered to be the same person for purposes of this regulation.

*2(a)(23) Prepaid finance charge.*

1. *General.* Prepaid finance charges must be taken into account under §226.18(b) in computing the disclosed amount financed, and must be disclosed if the creditor provides an itemization of the amount financed under §226.18(c).

2. *Examples.* Common examples of prepaid finance charges include:

- Buyer's points.
- Service fees.
- Loan fees.
- Finder's fees.
- Loan guarantee insurance.
- Credit investigation fees.

However, in order for these or any other finance charges to be considered prepaid, they must be either paid separately in cash or check or withheld from the proceeds. Prepaid finance charges include any portion of the finance charge paid prior to or at closing or settlement.

3. *Exclusions. Add-on* and *discount* finance charges are not prepaid finance charges for purposes of this regulation. Finance charges are not *prepaid* merely because they are precomputed, whether or not a portion of the charge will be rebated to the consumer upon prepayment. See the commentary to §226.18(b).

4. *Allocation of lump-sum payments.* In a credit sale transaction involving a lump-sum payment by the consumer and a discount or other item that is a finance charge under §226.4, the discount or other item is a prepaid finance charge to the extent the lump-sum payment is not applied to the cash price. For example, a seller sells property to a consumer for $10,000, requires the consumer to pay $3,000 at the time of the purchase, and finances the remainder as a closed-end credit transaction. The cash price of the property is $9,000. The seller is the creditor in the transaction and therefore the $1,000 difference between the credit and cash prices (the discount) is a finance charge. (See the commentary to §§226.4(b)(9) and 226.4(c)(5).) If the creditor applies the entire $3,000 to the cash price and adds the $1,000 finance charge to the interest on the $6,000 to arrive at the total finance charge, all of the $3,000 lump-sum payment is a downpayment and the discount is not a prepaid finance charge. However, if the creditor only applies $2,000 of the lump-sum payment to the cash price, then $2,000 of the $3,000 is a downpayment and the $1,000 discount is a prepaid finance charge.

*2(a)(24) Residential mortgage transaction.*

1. *Relation to other sections.* This term is important in six provisions in the regulation:

- Section 226.4(c)(7)—exclusions from the finance charge.
- Section 226.15(f)—exemption from the right of rescission.
- Section 226.18(q)—whether or not the obligation is assumable.
- Section 226.19—special timing rules.
- Section 226.20(b)—disclosure requirements for assumptions.
- Section 226.23(f)—exemption from the right of rescission.

2. *Lien status.* The definition is not limited to first lien transactions. For example, a consumer might assume a paid-down first mortgage (or borrow part of the purchase price) and borrow the balance of the purchase price from a creditor who takes a second mortgage. The second mortgage transaction is a *residential mortgage transaction* if the dwelling purchased is the consumer's principal residence.

3. *Principal dwelling.* A consumer can only have *one* principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered

the principal dwelling for purposes of applying this definition to a particular transaction. See the commentary to §§226.15(a) and 226.23(a).

4. *Construction financing.* If a transaction meets the definition of a residential mortgage transaction and the creditor chooses to disclose it as several transactions under §226.17(c)(6), each one is considered to be a residential mortgage transaction, even if different creditors are involved. For example:

• The creditor makes a construction loan to finance the initial construction of the consumer's principal dwelling, and the loan will be disbursed in 5 advances. The creditor gives 6 sets of disclosures (5 for the construction phase and 1 for the permanent phase). Each one is a residential mortgage transaction.

• One creditor finances the initial construction of the consumer's principal dwelling and another creditor makes a loan to satisfy the construction loan and provide permanent financing. Both transactions are residential mortgage transactions.

5. *Acquisition.* i. A residential mortgage transaction finances the acquisition of a consumer's principal dwelling. The term does not include a transaction involving a consumer's principal dwelling if the consumer had previously purchased and acquired some interest to the dwelling, even though the consumer had not acquired full legal title.

ii. Examples of new transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. In these instances, disclosures are not required under §226.18(q) or §226.19(a) (assumability policies and early disclosures for residential mortgage transactions). However, the rescission rules of §§226.15 and 226.23 do apply to these new transactions.

iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage, allowing the buyer to assume the mortgage, if the buyer had previously purchased the property and agreed with the seller to make the mortgage payments, §226.20(b) does not apply (assumptions involving residential mortgages).

6. *Multiple purpose transactions.* A transaction meets the definition of this section if any part of the loan proceeds will be used to finance the acquisition or initial construction of the consumer's principal dwelling. For example, a transaction to finance the initial construction of the consumer's principal dwelling is a residential mortgage transaction even if a portion of the funds will be disbursed directly to the consumer or used to satisfy a loan for the purchase of the land on which the dwelling will be built.

7. *Construction on previously acquired vacant land.* A residential mortgage transaction includes a loan to finance the construction of a consumer's principal dwelling on a vacant lot previously acquired by the consumer.

*2(a)(25) Security interest.*

1. *Threshold test.* The threshold test is whether a particular interest in property is recognized as a security interest under applicable law. The regulation does not determine whether a particular interest is a security interest under applicable law. If the creditor is unsure whether a particular interest is a security interest under applicable law (for example, if statutes and case law are either silent or inconclusive on the issue), the creditor may at its option consider such interests as security interests for Truth in Lending purposes. However, the regulation and the commentary do exclude specific interests, such as after-acquired property and accessories, from the scope of the definition regardless of their categorization under applicable law, and these named exclusions may not be disclosed as security interests under the regulation. (But see the discussion of exclusions elsewhere in the commentary to §226.2(a)(25).)

2. *Exclusions.* The general definition of security interest excludes three groups of interests: Incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under §226.18, but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for Truth in Lending purposes.

3. *Incidental interests.* Incidental interests in property that are not security interests include, among other things:

• Assignment of rents.

• Right to condemnation proceeds.

• Interests in accessories and replacements.

• Interests in escrow accounts, such as for taxes and insurance.

• Waiver of homestead or personal property rights.

The notion of an *incidental interest* does not encompass an explicit security interest in an insurance policy if that policy is the primary collateral for the transaction—for example, in an insurance premium financing transaction.

4. *Operation of law.* Interests that arise solely by operation of law are excluded from the general definition. Also excluded are interests arising by operation of law that are

merely repeated or referred to in the contract. However, if the creditor has an interest that arises by operation of law, such as a vendor's lien, and takes an independent security interest in the same property, such as a UCC security interest, the latter interest is a disclosable security interest unless otherwise provided.

5. *Rescission rules.* Security interests that arise solely by operation of law are security interests for purposes of rescission. Examples of such interests are mechanics' and materialmen's liens.

6. *Specificity of disclosure.* A creditor need not separately disclose multiple security interests that it may hold in the same collateral. The creditor need only disclose that the transaction is secured by the collateral, even when security interests from prior transactions remain of record and a new security interest is taken in connection with the transaction. In disclosing the fact that the transaction is secured by the collateral, the creditor also need not disclose how the security interest arose. For example, in a closed-end credit transaction, a rescission notice need not specifically state that a new security interest is ''acquired'' or an existing security interest is ''retained'' in the transaction.

The acquisition or retention of a security interest in the consumer's principal dwelling instead may be disclosed in a rescission notice with a general statement such as the following: ''Your home is the security for the new transaction.''

*2(b) Rules of construction.*

1. *Footnotes.* Footnotes are used extensively in the regulation to provide special exceptions and more detailed explanations and examples. Material that appears in a footnote has the same legal weight as material in the body of the regulation.

2. *Amount.* The numerical amount must be a dollar amount unless otherwise indicated. For example, in a closed-end transaction (Subpart C), the amount financed and the amount of any payment must be expressed as a dollar amount. In some cases, an amount should be expressed as a percentage. For example, in disclosures provided before the first transaction under an open-end plan (Subpart B), creditors are permitted to explain how the amount of any finance charge will be determined; where a cash advance fee (which is a finance charge) is a percentage of each cash advance, the amount of the finance charge for that fee is expressed as a percentage.

References

*Statute:* Section 103.

*Other sections:* None.

*Other regulations:* Regulation E (12 CFR 205.2(d)).

*Previous regulation:* Sections 226.2, 226.8, and 226.9.

*1981 changes:* Section 226.2 implements amended section 103 of the act. Separate definitions for *comparative index of credit cost, discount, organization, period, real property, real property transaction, regular price,* and *surcharge* have been deleted. The definitions relating specifically to consumer leases are now found in the separate consumer leasing regulation, Regulation M (12 CFR Part 213).

Several terms are now defined elsewhere in the regulation or commentary rather than in §226.2. For example, *finance charge* is described and explained in §226.4, and *agricultural purpose* is discussed in the commentary to §226.3. Some terms, such as *unauthorized use,* are now defined as part of the substantive sections to which they apply. Other terms previously defined, such as *customer* and *organization,* are merged into new definitions. Section 226.2 contains new definitions for *arranger of credit, business day, closed-end credit, consumer, consummation, downpayment, prepaid finance charge,* and *residential mortgage transaction.*

The major changes in the definitions are as follows:

*Arranger of credit* has a significantly different meaning. It reflects the statutory amendment that limits *arrangers* to those who regularly arrange credit extensions for persons who are not themselves creditors. This definition was deleted effective October 1, 1982.

*Billing cycle* largely restates the prior definition, but requires cycles to be regular, and allows the four-day variance to be measured from a regular day as well as date. The definition also incorporates an interpretation that cycles may be no longer than quarterly.

*Business day* is new in the sense that the term previously appeared only in a footnote to the rescission provision, but it is now of general applicability. The general rule that it is a day when the creditor is open for business is new, but the rule for rescission purposes is the same as in the previous regulation.

*Cash price* now explicitly permits inclusion of various incidental charges imposed equally in cash and credit transactions.

*Consumer* has a narrower meaning in that guarantors, sureties, and endorsers are excluded from the general definition.

*Consumer credit* reflects the new statutory exemption for agricultural credit.

*Consummation* is a significant departure from longstanding interpretations of the previous definition. It now focuses only on the time the consumer becomes contractually obligated, rather than the time the consumer pays a nonrefundable fee or suffers an economic penalty for failing to go forward with the credit transaction.

*Credit* generally parallels the previous definition, but modifies the previous interpretations of the definition by excluding more transactions.

*Creditor* reflects the statutory amendments to the act that were intended to eliminate the problem of multiple creditors in a transaction. The *regularly* standard is still used, but it is now defined in terms of the frequency of the credit extensions. The new definition also requires that there be a *written* agreement to pay in more than 4 installments if no finance charge is imposed. Finally, the obligation must be initially payable to a person for that person to be the creditor.

*Dwelling* reflects the statutory amendment that expanded the scope of the definition to include *any* residential structure, whether or not it is real property under state law.

*Open-end credit* reflects the amended statutory definition requiring that the creditor reasonably contemplate repeated transactions. The new definition no longer requires the consumer to have the privilege of paying either in installments or in full.

*Periodic rate* combines the previous definitions of *period* and *periodic rate* with clarification in the commentary concerning transaction charges and 360-day-year factors.

*Security interest* is much narrower than the previous definition. Reflecting the legislative history of the simplification amendments, incidental interests are expressly excluded from the definition. Except for purposes of rescission, interests that arise solely by operation of law are also excluded.

*Section 226.3—Exempt Transactions*

*3(a) Business, commercial, agricultural, or organizational credit.*

1. *Primary purposes.* A creditor must determine in each case if the transaction is primarily for an exempt purpose. If some question exists as to the primary purpose for a credit extension, the creditor is, of course, free to make the disclosures, and the fact that disclosures are made under such circumstances is not controlling on the question of whether the transaction was exempt.

2. *Factors.* In determining whether credit to finance an acquisition—such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), the following factors should be considered:

• The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.

• The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.

• The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.

• The size of the transaction. The larger the transaction, the more likely it is to be business purpose.

• The borrower's statement of purpose for the loan.

Examples of business-purpose credit include:

• A loan to expand a business, even if it is secured by the borrower's residence or personal property.

• A loan to improve a principal residence by putting in a business office.

• A business account used occasionally for consumer purposes.

Examples of consumer-purpose credit include:

• Credit extensions by a company to its employees or agents if the loans are used for personal purposes.

• A loan secured by a mechanic's tools to pay a child's tuition.

• A personal account used occasionally for business purposes.

3. *Non-owner-occupied rental property.* Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule. See Comment 3(a)–4, however, for rules relating to owner-occupied rental property.

4. *Owner-occupied rental property.* If credit is extended to acquire, improve, or maintain rental property that is or will be owner-occupied within the coming year, different rules apply:

• Credit extended to acquire the rental property is deemed to be for business purposes if it contains more than *2* housing units.

• Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than *4* housing units. Since the amended statute defines *dwelling* to include 1 to 4 housing units, this rule preserves the right of rescission for credit extended for purposes other than acquisition.

Neither of these rules means that an extension of credit for property containing fewer than the requisite number of units is necessarily consumer credit. In such cases, the determination of whether it is business or consumer credit should be made by considering the factors listed in Comment 3(a)–2.

5. *Business credit later refinanced.* Business-purpose credit that is exempt from the regulation may later be rewritten for consumer purposes. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor.

6. *Agricultural purpose.* An *agricultural purpose* includes the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. The exemption also applies to a transaction involving real property that includes a dwelling (for example, the purchase of a farm with a homestead) if the transaction is primarily for agricultural purposes.

7. *Organizational credit.* The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit.

8. *Land trusts.* Credit extended for consumer purposes to a land trust is considered to be credit extended to a natural person rather than credit extended to an organization. In some jurisdictions, a financial institution financing a residential real estate transaction for an individual uses a land trust mechanism. Title to the property is conveyed to the land trust for which the financial institution itself is trustee. The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note. Assuming the transactions are for personal, family, or household purposes, these transactions are subject to the regulation since in substance (if not form) consumer credit is being extended.

*3(b) Credit over $25,000 not secured by real property or a dwelling.*

1. *Coverage.* Since a mobile home can be a dwelling under §226.2(a)(19), this exemption does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer, even if the credit exceeds $25,000. A loan commitment for closed-end credit in excess of $25,000 is exempt even though the amounts actually drawn never actually reach $25,000.

2. *Open-end credit.* An open-end credit plan is exempt under §226.3(b) (unless secured by real property or personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

- The creditor makes a firm commitment to lend over $25,000 with no requirement of additional credit information for any advances.
- The initial extension of credit on the line exceeds $25,000.

If a security interest is taken at a later time in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, the plan would no longer be exempt. The creditor must comply with all of the requirements of the regulation including, for example, providing the consumer with an initial disclosure statement. If the security interest being added is in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest. (See the commentary to §226.15 concerning the right of rescission.)

3. *Closed-end credit—subsequent changes.* A closed-end loan for over $25,000 may later be rewritten for $25,000 or less, or a security interest in real property or in personal property used or expected to be used as the consumer's principal dwelling may be added to an extension of credit for over $25,000. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor. (See the commentary to §226.23(a)(1) regarding the right of rescission when a security interest in a consumer's principal dwelling is added to a previously exempt transaction.)

*3(c) Public utility credit.*

1. *Examples.* Examples of public utility services include:

- Gas, water, or electrical services.
- Cable television services.
- Installation of new sewer lines, water lines, conduits, telephone poles, or metering equipment in an area not already serviced by the utility.

The exemption does *not* apply to extensions of credit, for example:

- To purchase appliances such as gas or electric ranges, grills, or telephones.
- To finance home improvements such as new heating or air conditioning systems.

*3(d) Securities or commodities accounts.*

1. *Coverage.* This exemption does not apply to a transaction with a broker registered solely with the state, or to a separate credit

extension in which the proceeds are used to purchase securities.

*3(e) Home fuel budget plans.*

1. *Definition.* Under a typical home fuel budget plan, the fuel dealer estimates the total cost of fuel for the season, bills the customer for an average monthly payment, and makes an adjustment in the final payment for any difference between the estimated and the actual cost of the fuel. Fuel is delivered as needed, no finance charge is assessed, and the customer may withdraw from the plan at any time. Under these circumstances, the arrangement is exempt from the regulation, even if a charge to cover the billing costs is imposed.

*3(f) Student loan programs.*

1. *Coverage.* This exemption applies to the Guaranteed Student Loan program (administered by the Federal government, State, and private non-profit agencies), the Auxiliary Loans to Assist Students (also known as PLUS) program, and the National Direct Student Loan program.

References

*Statute:* Sections 103 (s) and (t) and 104.

*Other sections:* Section 226.12 (a) and (b).

*Previous regulation:* Section 226.3 and Interpretations §§226.301 and 226.302.

*1981 changes:* The business credit exemption has been expanded to include credit for agricultural purposes. The rule of Interpretation §226.302, concerning credit relating to structures containing more than 4 housing units, has been modified and somewhat expanded by providing more exclusions for transactions involving rental property.

The exemption for transactions above $25,000 secured by real estate has been narrowed; all transactions secured by the consumer's principal dwelling (even if not considered real property) are now subject to the regulation.

The public utility exemption now covers the financing of the extension of a utility into an area not earlier served by the utility, in addition to the financing of services.

The securities credit exemption has been extended to broker-dealers registered with the CFTC as well as the SEC.

A new exemption has been created for home fuel budget plans.

*Section 226.4—Finance Charge*

*4(a) Definition.*

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

i. For example, the following items are not finance charges:

A. Taxes, license fees, or registration fees paid by both cash and credit customers.

B. Discounts that are available to cash and credit customers, such as quantity discounts.

C. Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided that credit customers who are members of the group and do not qualify for the discount pay no more than the nonmember cash customers.

D. Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

ii. In contrast, the following items are finance charges:

A. Inspection and handling fees for the staged disbursement of construction loan proceeds.

B. Fees for preparing a Truth in Lending disclosure statement, if permitted by law (for example, the Real Estate Settlement Procedures Act prohibits such charges in certain transactions secured by real property).

C. Charges for a required maintenance or service contract imposed only in a credit transaction.

iii. If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

A. If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $100 in a cash transaction and $150 in a credit transaction, only $50 is a finance charge.

2. *Costs of doing business.* Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged or the cash price of the property or service sold. However, if the creditor separately imposes a charge on the consumer to cover certain costs, the charge is a finance charge if it otherwise meets the definition. For example:

• A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge as long as the discount is not separately imposed on the consumer. (See §226.4(b)(6).)

• A tax imposed by a state or other governmental body on a creditor is not a finance charge if the creditor absorbs the tax as a cost of doing business and does not separately impose the tax on the consumer. (For additional discussion of the treatment of taxes, see other commentary to §226.4(a).)

3. *Forfeitures of interest.* If the creditor reduces the interest rate it pays or stops paying interest on the consumer's deposit account or any portion of it for the term of a credit transaction (including, for example, an overdraft on a checking account or a loan secured by a certificate of deposit), the interest lost is a finance charge. (See the commentary to §226.4(c)(6).) For example:

- A consumer borrows $5,000 for 90 days and secures it with a $10,000 certificate of deposit paying 15% interest. The creditor charges the consumer an interest rate of 6% on the loan and stops paying interest on $5,000 of the $10,000 certificate for the term of the loan. The interest lost is a finance charge and must be reflected in the annual percentage rate on the loan.

However, the consumer must be *entitled* to the interest that is not paid in order for the lost interest to be a finance charge. For example:

- A consumer wishes to buy from a financial institution a $10,000 certificate of deposit paying 15% interest but has only $4,000. The financial institution offers to lend the consumer $6,000 at an interest rate of 6%, but will pay the 15% interest only on the amount of the consumer's deposit, $4,000. The creditor's failure to pay interest on the $6,000 does not result in an additional finance charge on the extension of credit, provided the consumer is entitled by the deposit agreement with the financial institution to interest only on the amount of the consumer's deposit.
- A consumer enters into a combined time deposit/credit agreement with a financial institution that establishes a time deposit account and an open-end line of credit. The line of credit may be used to borrow against the funds in the time deposit. The agreement provides for an interest rate on any credit extension of, for example, 1%. In addition, the agreement states that the creditor will pay 0% interest on the amount of the time deposit that corresponds to the amount of the credit extension(s). The interest that is not paid on the time deposit by the financial institution is not a finance charge (and therefore does not affect the annual percentage rate computation).

4. *Treatment of fees for use of automated teller machines.* Any charge imposed on a cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is not a finance charge to the extent that it does not exceed the charge imposed by the card issuer on its cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. (See the commentary to §226.6(b).)

5. *Taxes.* i. Generally, a tax imposed by a state or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer.

ii. In contrast, a tax is not a finance charge (even if the tax is collected by the creditor) if applicable law imposes the tax:

A. Solely on the consumer;

B. On the creditor and the consumer jointly;

C. On the credit transaction, without indicating which party is liable for the tax; or

D. On the creditor, if applicable law directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to passing on the tax, the law is deemed not to authorize passing it on.)

iii. For example, a stamp tax, property tax, intangible tax, or any other state or local tax imposed on the consumer, or on the credit transaction, is not a finance charge even if the tax is collected by the creditor.

iv. In addition, a tax is not a finance charge if it is excluded from the finance charge by an other provision of the regulation or commentary (for example, if the tax is imposed uniformly in cash and credit transactions).

*4(a)(1) Charges by third parties.*

1. *Choosing the provider of a required service.* An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. *Annuities associated with reverse mortgages.* Some creditors offer annuities in connection with a reverse mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.

*4(a)(2) Special rule; closing agent charges.*

1. *General.* This rule applies to charges by a third party serving as the closing agent for the particular loan. An example of a closing agent charge included in the finance charge is a courier fee where the creditor requires the use of a courier.

2. *Required closing agent.* If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion

of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under §226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under §226.4(a). A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and is incidental to a lump-sum closing fee excluded under §226.4(c)(7).

*4(a)(3) Special rule; mortgage broker fees.*

1. *General.* A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. For example, to exclude an application fee from the finance charge under §226.4(c)(1), a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. *Coverage.* This rule applies to charges paid by consumers to a mortgage broker in connection with a consumer credit transaction secured by real property or a dwelling.

3. *Compensation by lender.* The rule requires all mortgage broker fees to be included in the finance charge. Creditors sometimes compensate mortgage brokers under a separate arrangement with those parties. Creditors may draw on amounts paid by the consumer, such as points or closing costs, to fund their payment to the broker. Compensation paid by a creditor to a mortgage broker under an agreement is not included as a separate component of a consumer's total finance charge (although this compensation may be reflected in the finance charge if it comes from amounts paid by the consumer to the creditor that are finance charges, such as points and interest).

*4(b) Examples of finance charges.*

1. *Relationship to other provisions.* Charges or fees shown as examples of finance charges in §226.4(b) may be excludable under §226.4(c), (d), or (e). For example:

• Premiums for credit life insurance, shown as an example of a finance charge under §226.4(b)(7), may be excluded if the requirements of §226.4(d)(1) are met.

• Appraisal fees mentioned in §226.4(b)(4) are excluded for real property or residential mortgage transactions under §226.4(c)(7).

*Paragraph 4(b)(2).*

1. *Checking account charges.* A checking or transaction account charge imposed in connection with a credit feature is a finance charge under §226.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under §226.4(b)(2). To illustrate:

i. A $5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to §226.4(c)(4).)

ii. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the $5 charge is not a finance charge.

*Paragraph 4(b)(3).*

1. *Assumption fees.* The assumption fees mentioned in §226.4(b)(3) are finance charges only when the assumption occurs and the fee is imposed on the new buyer. The assumption fee is a finance charge in the new buyer's transaction.

*Paragraph 4(b)(5).*

1. *Credit loss insurance.* Common examples of the insurance against credit loss mentioned in §226.4(b)(5) are mortgage guaranty insurance, holder in due course insurance, and repossession insurance. Such premiums must be included in the finance charge only for the period that the creditor requires the insurance to be maintained.

2. *Residual value insurance.* Where a creditor requires a consumer to maintain residual value insurance or where the creditor is a beneficiary of a residual value insurance policy written in connection with an extension of credit (as is the case in some forms of automobile balloon payment financing, for example), the premiums for the insurance must be included in the finance charge for the period that the insurance is to be maintained. If a creditor pays for residual value insurance and absorbs the payment as a cost of doing business, such costs are not considered finance charges. (See comment 4(a)–2.)

*Paragraphs 4(b) (7) and (8).*

1. *Pre-existing insurance policy.* The insurance discussed in §226.4(b) (7) and (8) does not include an insurance policy (such as a life or an automobile collision insurance policy) that is already owned by the consumer, even if the policy is assigned to or otherwise made payable to the creditor to satisfy an insurance requirement. Such a policy is not "written in connection with" the transaction, as long as the insurance was not purchased for use in that credit extension, since it was previously owned by the consumer.

2. *Insurance written in connection with a transaction.* Insurance sold after consummation in closed-end credit transactions or after the opening of a plan in open-end credit transactions is not "written in connection with" the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because

the consumer requests insurance after consummation or the opening of a plan (although credit sale disclosures may be required for the insurance sold after consummation if it is financed).

3. *Substitution of life insurance.* The premium for a life insurance policy purchased and assigned to satisfy a credit life insurance requirement must be included in the finance charge, but only to the extent of the cost of the credit life insurance if purchased from the creditor or the actual cost of the policy (if that is less than the cost of the insurance available from the creditor). If the creditor does not offer the required insurance, the premium to be included in the finance charge is the cost of a policy of insurance of the type, amount, and term required by the creditor.

4. *Other insurance.* Fees for required insurance not of the types described in §226.4(b)(7) and (8) are finance charges and are not excludable. For example:

• The premium for a hospitalization insurance policy, if it is required to be purchased only in a credit transaction, is a finance charge.

*Paragraph 4(b)(9).*

1. *Discounts for payment by other than credit.* The discounts to induce payment by other than credit mentioned in §226.4(b)(9) include, for example, the following situation:

• The seller of land offers individual tracts for $10,000 each. If the purchaser pays cash, the price is $9,000, but if the purchaser finances the tract with the seller the price is $10,000. The $1,000 difference is a finance charge for those who buy the tracts on credit.

2. *Exception for cash discounts.* Discounts offered to induce consumers to pay for property or services by cash, check, or other means not involving the use of either an open-end credit plan or a credit card (whether open-end or closed-end credit is extended on the card) may be excluded from the finance charge under section 167(b) of the Act (as amended by Pub. L. 97–25, July 27, 1981). The discount may be in whatever amount the seller desires, either as a percentage of the regular price (as defined in section 103(z) of the Act, as amended) or a dollar amount. This provision applies only to transactions involving an open-end credit plan or a credit card. The merchant must offer the discount to prospective buyers whether or not they are cardholders or members of the open-end credit plan. The merchant may, however, make other distinctions. For example:

• The merchant may limit the discount to payment by cash, and not offer it for payment by check or by use of a debit card.

• The merchant may establish a discount plan that allows a 15% discount for payment by cash, a 10% discount for payment by check, and a 5% discount for payment by a particular credit card. None of these discounts is a finance charge.

Section 171(c) of the Act excludes section 167(b) discounts from treatment as a finance charge or other charge for credit under any state usury or disclosure laws.

3. *Determination of the regular price.* The *regular price* is critical in determining whether the difference between the price charged to cash customers and credit customers is a *discount* or a *surcharge*, as these terms are defined in amended section 103 of the Act. The *regular price* is defined in section 103 of the Act as—

. . . the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit account or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted. . . .

For example, in the sale of motor vehicle fuel, the tagged or posted price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. Service station operators may designate separate pumps or separate islands as being for either cash or credit purchases and display only the appropriate prices at the various pumps. If a pump is capable of displaying on its meter either a cash or a credit price depending upon the consumer's means of payment, both the cash price and the credit price must be displayed at the pump. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign clearly indicates that the price is limited to cash purchases.

*4(b)(10) Debt cancellation fees.*

1. *Definition.* Debt cancellation coverage provides for payment or satisfaction of all or part of a debt when a specified event occurs. The term includes guaranteed automobile protection or ''GAP'' agreements, which pay or satisfy the remaining debt after property insurance benefits are exhausted.

*4(c) Charges excluded from the finance charge.*

*Paragraph 4(c)(1).*

1. *Application fees.* An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as mortgage loans, However, if the fee is to be excluded from the finance charge under §226.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.

*Paragraph 4(c)(2).*

1. *Late payment charges.* Late payment charges can be excluded from the finance charge under §226.4(c)(2) whether or not the person imposing the charge continues to extend credit on the account or continues to provide property or services to the consumer. In determining whether a charge is for actual unanticipated late payment on a 30-day account, for example, factors to be considered include:

• The terms of the account. For example, is the consumer required by the account terms to pay the account balance in full each month? If not, the charge may be a finance charge.

• The practices of the creditor in handling the accounts. For example, regardless of the terms of the account, does the creditor allow consumers to pay the accounts over a period of time without demanding payment in full or taking other action to collect? If no effort is made to collect the full amount due, the charge may be a finance charge.

Section 226.4(c)(2) applies to late payment charges imposed for failure to make payments as agreed, as well as failure to pay an account in full when due.

2. *Other excluded charges.* Charges for ''delinquency, default, or a similar occurrence'' include, for example, charges for reinstatement of credit privileges or for summitting as payment a check that is later returned unpaid.

*Paragraph 4(c)(3).*

1. *Assessing interest on an overdraft balance.* A charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

*Paragraph 4(c)(4).*

1. *Participation fees—periodic basis.* The participation fees mentioned in §226.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

2. *Participation fees—exclusions.* Minimum monthly charges, charges for non-use of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by §226.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to §226.4(b)(2). Also, see comment 14(c)–7 for treatment of certain types of fees excluded in determining the annual percentage rate for the periodic statement.)

*Paragraph 4(c)(5).*

1. *Seller's points.* The seller's points mentioned in §226.4(c)(5) include any charges imposed by the creditor upon the non-creditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price. Seller's points are frequently involved in real estate transactions guaranteed or insured by governmental agencies. A *commitment fee* paid by a non-creditor seller (such as a real estate developer) to the creditor should be treated as seller's points. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.

2. *Other seller-paid amounts.* Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available.

*Paragraph 4(c)(6).*

1. *Lost interest.* Certain federal and state laws mandate a percentage differential between the interest rate paid on a deposit and the rate charged on a loan secured by that deposit. In some situations because of usury limits the creditor must reduce the interest rate paid on the deposit and, as a result, the consumer loses some of the interest that would otherwise have been earned. Under §226.4(c)(6), such *lost interest* need not be included in the finance charge. This rule applies only to an interest reduction imposed because a rate differential is required by law and a usury limit precludes compliance by any other means. If the creditor imposes a differential that exceeds that required, only the lost interest attributable to the excess amount is a finance charge. (See the commentary to §226.4(a).)

*Paragraph 4(c)(7).*

1. *Real estate or residential mortgage transaction charges.* The list of charges in §226.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees

are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit report fees cover not only the cost of the report, but also the cost of verifying information in the report. In all cases, charges excluded under § 226.4(c)(7) must be bona fide and reasonable.

2. *Lump sum charges.* If a lump sum charged for several services includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. However, a lump sum charged for conducting or attending a closing (for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (for example, reviewing or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties are performed. The entire charge is excluded even if a fee for the incidental services would be a finance charge if it were imposed separately.

3. *Charges assessed during the loan term.* Real estate or residential mortgage transaction charges excluded under § 226.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax lien status or flood insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

*4(d) Insurance and debt cancellation coverage.*

1. *General.* Section 226.4(d) permits insurance premiums and charges and debt-cancellation charges to be excluded from the finance charge. The required disclosures must be made in writing. The rules on location of insurance and debt-cancellation disclosures for closed-end transactions are in § 226.17(a). For purposes of § 226.4(d), all references to insurance also include debt cancellation coverage unless the context indicates otherwise.

2. *Timing of disclosures.* If disclosures are given early, for example under § 226.17(f) or § 226.19(a), the creditor need not redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under § 226.4(d) must be made in order to exclude the premiums from the finance charge.

3. *Premium rate increases.* The creditor should disclose the premium amount based on the rates currently in effect and need not designate it as an estimate even if the premium rates may increase. An increase in insurance rates after consummation of a closed-end credit transaction or during the life of an open-end credit plan does not require redisclosure in order to exclude the additional premium from treatment as a finance charge.

4. *Unit-cost disclosures.* i. *Open-end credit.* The premium or fee for insurance or debt cancellation for the initial term of coverage may be disclosed on a unit-cost basis in open-end credit transactions. The cost per unit should be based on the initial term of coverage, unless one of the options under comment 4(d)–12 is available.

ii. *Closed-end credit.* One of the transactions for which unit-cost disclosures (such as 50 cents per year for each $100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of $8,000 is covered by a plan of credit life insurance coverage with a maximum of $10,000. The consumer requests an additional $4,000 loan to be covered by the same insurance plan. Since the $4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance cost disclosures on the $4,000 loan on a unit-cost basis.

5. *Required credit life insurance.* Credit life, accident, health, or loss-of-income insurance must be voluntary in order for the premium or charges to be excluded from the finance charge. Whether the insurance is in fact required or optional is a factual question. If the insurance is required, the premiums must be included in the finance charge, whether the insurance is purchased from the creditor or from a third party. If the consumer is required to elect one of several options—such as to purchase credit life insurance, or to assign an existing life insurance policy, or to pledge security such as a certificate of deposit—and the consumer purchases the credit life insurance policy, the premium must be included in the finance charge. (If the consumer assigns a preexisting policy or pledges security instead, no premium is included in the finance charge. The security interest would be disclosed under § 226.6(c) or § 226.18(m). See the commentary to § 226.4(b) (7) and (8).)

6. *Other types of voluntary insurance.* Insurance is not credit life, accident, health, or loss-of-income insurance if the creditor or the credit account of the consumer is not the beneficiary of the insurance coverage. If

such insurance is not required by the creditor as an incident to or a condition of credit, it is not covered by §226.4.

7. *Signatures.* If the creditor offers a number of insurance options under §226.4(d), the creditor may provide a means for the consumer to sign or initial for each option, or it may provide for a single authorizing signature or initial with the options selected designated by some other means, such as a check mark. The insurance authorization may be signed or initialed by any consumer, as defined in §226.2(a)(11), or by an authorized user on a credit card account.

8. *Property insurance.* To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation.

9. *Single interest insurance.* Blanket and specific single interest coverage are treated the same for purposes of the regulation. A charge for either type of single interest insurance may be excluded from the finance charge if:

• The insurer waives any right of subrogation.

• The other requirements of §226.4(d)(2) are met. This includes, of course, giving the consumer the option of obtaining the insurance from a person of the consumer's choice. The creditor need not ascertain whether the consumer is able to purchase the insurance from someone else.

10. *Single-interest insurance defined.* The term *single-interest insurance* as used in the regulation refers only to the types of coverage traditionally included in the term *vendor's single-interest insurance* (or *VSI*), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under §226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is $1.00 or less (or $5.00 or less in the case of a multi-year policy).

11. *Initial term.* i. The initial term of the insurance or debt cancellation coverage determines the period for which a premium amount or fee must be disclosed, unless one of the options discussed under comment 4(d)–12 is available. For purposes of §226.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage or coverage may end due to nonpayment before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though premiums are paid monthly and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.

12. *Initial term; alternative.* i. *General.* A creditor has the option of providing cost disclosures on the basis of an assumed initial term of one year of insurance or debt-cancellation coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

ii. *Open-end plans.* For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. *Examples.* To illustrate:

A. A credit life insurance policy providing coverage for a 30-year mortgage loan has an initial term of 30 years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

13. *Loss-of-income insurance.* The loss-of-income insurance mentioned in §226.4(d) includes involuntary unemployment insurance, which provides that some or all of the consumer's payments will be made if the consumer becomes unemployed involuntarily.

*4(d)(3) Voluntary debt cancellation fees.*

1. *General.* Fees charged for the specialized form of debt cancellation agreement known

as guaranteed automobile protection ("GAP") agreements must be disclosed according to §226.4(d)(3) rather than according to §226.4(d)(2) for property insurance.

2. *Disclosures.* Creditors can comply with §226.4(d)(3) by providing a disclosure that refers to debt cancellation coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

*4(e) Certain security interest charges.*

1. *Examples.*

i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under §226.4(e) (1) and (3). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security interest). (See comment 4(a)–5 regarding the treatment of taxes, generally.)

ii. *Charges not excludable.* If the obligation is between the creditor and a third party (an assignee, for example), charges or other fees for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents relating to that obligation are not excludable from the finance charge under this section.

2. *Itemization.* The various charges described in §226.4(e) (1) and (3) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or filing fees may be used.

3. *Notary fees.* In order for a notary fee to be excluded under §226.4(e)(1), all of the following conditions must be met:

- The document to be notarized is one used to perfect, release, or continue a security interest.
- The document is required by law to be notarized.
- A notary is considered a public official under applicable law.
- The amount of the fee is set or authorized by law.

4. *Non-filing insurance.* The exclusion in §226.4(e)(2) is available only if non-filing insurance is purchased. If the creditor collects and simply retains a fee as a sort of *self-insurance* against non-filing it may not be excluded from the finance charge. If the non-filing insurance premium exceeds the amount of the fees excludable from the finance charge under §226.4(e)(1), only the excess is a finance charge. For example:

- The fee for perfecting a security interest is $5.00 and the fee for releasing the security interest is $3.00. The creditor charges $10.00 for non-filing insurance. Only $8.00 of the $10.00 is excludable from the finance charge.

*4(f) Prohibited offsets.*

1. *Earnings on deposits or investments.* The rule that the creditor shall not deduct any earnings by the consumer or deposits or investments applies whether or not the creditor has a security interest in the property.

References

*Statute:* Sections 106, 167, and 171(c).

*Other sections:* Sections 226.9(d) and 226.12.

*Previous regulation:* Section 226.4 and Interpretations §§226.401 through 226.407.

*1981 changes:* While generally continuing the rules under the previous regulation, §226.4 reflects amendments to section 106 of the act and makes certain other changes in the rules for determining the finance charge. For example, §226.4(a) expressly excludes from the finance charge amounts payable in comparable cash transactions. Section 226.8(o) of the previous regulation, dealing with discounts for prompt payment of a credit sale, was deleted in the revised regulation since the general test for a finance charge now focuses on a comparison of cash and credit transactions. With respect to various exclusions from the finance charge: application fees imposed on all applicants are no longer finance charges; continuing to extend credit to a consumer is no longer a controlling test for determining whether a late payment charge is bona fide; seller's points are not to be included in the finance charge; and the special exclusions for real estate transactions apply to all *residential mortgage transactions.*

The simplified rules for excluding insurance from the finance charge allow unit-cost disclosure in certain closed-end credit transactions; permit initials as well as signatures on the authorization; permit any consumer to authorize insurance for other consumers; and delete the requirement that the authorization be separately dated.

SUBPART B—OPEN-END CREDIT

*Section 226.5—General Disclosure Requirements*

*5(a) Form of disclosures.*

*Paragraph 5(a)(1).*

1. *Clear and conspicuous.* The *clear and conspicuous* standard requires that disclosures be in a reasonably understandable form. Except where otherwise provided, the standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. (But see comments 5a(a)(2)–1 and –2 for special rules concerning §226.5a disclosures for credit card

applications and solicitations.) The standard does not prohibit:

• Pluralizing required terminology (*finance charge* and *annual percentage rate*).

• Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.

• Sending promotional material with the required disclosures.

• Using commonly accepted or readily understandable abbreviations (such as *mo.* for *month* or *TX* for *Texas*) in making any required disclosures.

• Using codes or symbols such as *APR* (for annual percentage rate), *FC* (for finance charge), or *Cr* (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.

2. *Integrated document.* The creditor may make both the initial disclosures (§226.6) and the periodic statement disclosures (§226.7) on more than one page, and use both the front and the reverse sides, so long as the pages constitute an integrated document. An integrated document would not include disclosure pages provided to the consumer at different times or disclosures interspersed on the same page with promotional material. An integrated document would include, for example:

• Multiple pages provided in the same envelope that cover related material and are folded together, numbered consecutively, or clearly labelled to show that they relate to one another.

• A brochure that contains disclosures and explanatory material about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features.

*Paragraph 5(a)(2).*

1. *When disclosures must be more conspicuous.* The term *finance charge* and *annual percentage rate,* when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in footnote 9. At the creditor's option, *finance charge* and *annual percentage rate* may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:

• In disclosing the annual percentage rate as required by §226.6(a)(2), the term *annual percentage rate* is subject to the *more conspicuous* rule.

• In disclosing the amount of the finance charge, required by §226.7(f), the term *finance charge* is subject to the *more conspicuous* rule.

• Although neither *finance charge* nor *annual percentage rate* need be emphasized when used as part of general informational material or in textual descriptions of other terms, emphasis is permissible in such cases. For example, when the terms appear as part of the explanations required under §226.6(a) (3) and (4), they may be equally conspicuous as the disclosures required under §§226.6(a)(2) and 226.7(g).

2. *Making disclosures more conspicuous.* In disclosing the terms *finance charge* and *annual percentage rate* more conspicuously, only the words *finance charge* and *annual percentage rate* should be accentuated. For example, if the term *total finance charge* is used, only *finance charge* should be emphasized. The disclosures may be made more conspicuous by, for example:

• Capitalizing the words when other disclosures are printed in lower case.

• Putting them in bold print or a contrasting color.

• Underlining them.

• Setting them off with asterisks.

• Printing them in larger type.

3. *Disclosure of figures—exception to more conspicuous rule.* The terms *annual percentage rate* and *finance charge* need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

*5(b) Time of disclosures.*

*5(b)(1) Initial disclosures.*

1. *Disclosure before the first transaction.* The rule that the initial disclosure statement must be furnished "before the first transaction" requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan. For example, the initial disclosures must be given before the consumer makes the first purchase (such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store), receives the first advance, or pays any fees or charges under the plan other than an application fee or refundable membership fee (see below). The prohibition on the payment of fees other than application or refundable membership fees before initial disclosures are provided does not apply to home equity plans subject to §226.5b. See the commentary to §226.5b(h) regarding the collection of fees for home equity plans covered by §226.5b.

• If the consumer pays a membership fee before receiving the Truth in Lending disclosures, or the consumer agrees to the imposition of a membership fee at the time of application and the Truth in Lending disclosure statement is not given at that time, disclosures are timely as long as the consumer, after receiving the disclosures, can reject the plan. The creditor must refund the membership fee if it has been paid, or clear the account if it has been debited to the consumer's account.

• If the consumer receives a cash advance check at the same time the Truth in Lending disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).

• Initial disclosures need not be given before the imposition of an application fee under §226.4(c)(1).

• If, after receiving the disclosures, the consumer uses the account, pays a fee, or negotiates a cash advance check, the creditor may consider the account not rejected for purposes of this section.

2. *Reactivation of suspended account.* If an account is temporarily suspended (for example, because the consumer has exceeded a credit limit, or because a credit card is reported lost or stolen) and then is reactivated, no new initial disclosures are required.

3. *Reopening closed account.* If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new initial disclosures are required. No new initial disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the *new* account then continues on the same terms.

4. *Converting closed-end to open-end credit.* If a closed-end credit transaction is converted to an open-end credit account under a written agreement with the consumer, the initial disclosures under §226.6 must be given before the consumer becomes obligated on the open-end credit plan. (See the commentary to §226.17 on converting open-end credit to closed-end credit.)

5. *Balance transfers.* A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must comply with §226.6 before the balance transfer occurs. Card issuers that are subject to the requirements of §226.5a may establish procedures that comply with both sections in a single disclosure statement.

*5(b)(2) Periodic statements.*

*Paragraph 5(b)(2)(i).*

1. *Periodic statements not required.* Periodic statements need not be sent in the following cases:

• If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $1—so long as no finance charge has been imposed on the account for that cycle.

• If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (See §226.13(a)(7).)

2. *Termination of credit privileges.* When an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under §226.5(b)(2)((i) (for example, when an open-end credit plan ends and consumers are paying off outstanding balances) and must continue to follow all of the other open-end credit requirements and procedures in subpart B.

*Paragraph 5(b)(2)(ii).*

1. *14-day rule.* The 14-day rule for mailing or delivering periodic statements does not apply if charges (for example, transaction or activity charges) are imposed regardless of the timing of a periodic statement. The 14-day rule does apply, for example:

• If current debits retroactively become subject to finance charges when the balance is not paid in full by a specified date.

• If charges other than finance charges will accrue when the consumer does not make timely payments (for example, late payment charges or charges for exceeding a credit limit).

2. *Computer malfunction.* Footnote 10 does not extend to the failure to provide a periodic statement because of computer malfunction.

3. *Calling for periodic statements.* When the consumer initiates a request, the creditor may permit, but may not require, consumers to pick up their periodic statements. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement must be made available in accordance with the 14-day rule. If the consumer wishes to receive the statement by electronic communication, the creditor must comply with the consumer consent requirements as provided in §226.36(b).

*5(c) Basis of disclosures and use of estimates.*

1. *Legal obligation.* The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.

• The legal obligation is determined by applicable state or other law.

• The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

• The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

2. *Estimates—obtaining information.* Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time disclosures are made. The *reasonably available* standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. In using estimates, the creditor is not required to disclose the basis for the estimated figures, but may include such explanations as additional information. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to insurance companies for the cost of insurance.

3. *Estimates—redisclosure.* If the creditor makes estimated disclosures, redisclosure is not required for that consumer, even though more accurate information becomes available before the first transaction. For example, in an open-end plan to be secured by real estate, the creditor may estimate the appraisal fees to be charged; such an estimate might reasonably be based on the prevailing market rates for similar appraisals. If the exact appraisal fee is determinable after the estimate is furnished but before the consumer receives the first advance under the plan, no new disclosure is necessary.

4. *Deferred payment transactions.* See comment 7–3(iv).

*5(d) Multiple creditors; multiple consumers.*

1. *Multiple creditors.* Under §226.5(d):

- Creditors must choose which of them will make the disclosures.
- A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.
- All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.
- In some open-end credit programs involving multiple creditors, the consumer has the option (for example, at the end of a billing cycle) to pay creditor A directly or to transfer to creditor B all or part of the amount owing. If the consumer elects the latter option, the consumer no longer is obligated to creditor A for the specific amount(s) transferred. In such a case, creditor A and creditor B may send separate periodic statements that reflect the separate obligations owed to each.

2. *Multiple consumers.* Disclosures may be made to either obligor on a joint account. Disclosure responsibilities are not satisfied by giving disclosures to only a surety or guarantor for a principal obligor or to an authorized user. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under §226.15.

*5(e) Effect of subsequent events.*

1. *Events causing inaccuracies.* Inaccuracies in disclosures are not violations if attributable to events occurring after disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to provide a new disclosure(s) under §226.9(c).

2. *Use of inserts.* When changes in a creditor's plan affect required disclosures, the creditor may use inserts with outdated disclosure forms. Any insert:

- Should clearly refer to the disclosure provision it replaces.
- Need not be physically attached or affixed to the basic disclosure statement.
- May be used only until the supply of outdated forms is exhausted.

References

*Statute:* Sections 121 (a) through (c), 122 (a) and (b), 124, 127 (a) and (b), and 163(a).

*Other sections:* Sections 226.6, 226.7, and 226.9.

*Previous regulation:* Sections 226.6 (a) and (c) through (g), and 226.7 (a) through (c).

*1981 changes:* Section 226.5 implements amendments to the act and reflects several simplifying changes to the regulation. The use of required terminology, except for *finance charge* and *annual percentage rate,* is no longer required. Type size requirements have been deleted. Initial and periodic statement disclosures may be multi-page, so long as they constitute an integrated statement. New rules are provided for the basis of disclosures and for the use of estimates. The rules for credit plans involving multiple creditors or multiple consumers now provide that only one creditor need make the disclosures and that the disclosures need be made to only one primarily liable consumer.

*Section 226.5a Credit and Charge Card Applications and Solicitations*

1. *General.* Section 226.5a generally requires that credit disclosures be contained in application forms and preapproved solicitations initiated by a card issuer to open a credit or charge card account. (See the commentary to §226.5a(a)(3) and (e) for exceptions; see also §226.2(a)(15) and accompanying commentary for the definition of charge card.)

2. *Combining disclosures.* The initial disclosures required by §226.6 do not substitute for the disclosures required by §226.5a; however, a card issuer may establish procedures so that a single disclosure statement meets the requirements of both sections. For example, if a card issuer in complying with §226.5a(e)(2) provides all the applicable disclosures required under §226.6, in a form that the consumer may keep and in accordance

with the other format and timing requirements for that section, the issuer satisfies the initial disclosure requirements under §226.6 as well as the disclosure requirements of §226.5a(e)(2). Or if, in complying with §226.5a(c) or §226.5a(d)(2), a card issuer provides an integrated document that the consumer may keep, and provides the §226.5a disclosures (in a tabular format) along with the additional disclosures required under §226.6 (presented outside of the table), the card issuer satisfies the requirements of both §§226.5a and 226.6.

*5a(a) General Rules*

*5a(a)(2) Form of Disclosures*

1. *Clear and conspicuous standard.* For purposes of §226.5a disclosures, *clear and conspicuous* means in a reasonably understandable form and readily noticeable to the consumer. As to type size, disclosures in 12-point type are deemed to be readily noticeable for purposes of §226.5a. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard. Disclosures that are transmitted by electronic communication are judged for purposes of the clear and conspicuous standard based on the form in which they are provided even though they may be viewed by the consumer in a different form.

2. *Prominent location.* i. *Generally.* Certain of the required disclosures provided on or with an application or solicitation must be prominently located. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form. If the disclosures appear elsewhere, they are deemed to be prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable. Disclosures required by §226.5a(b) that are placed outside the table must begin on the same page as the table but need not end on the same page.

ii. *Electronic disclosures.* Electronic disclosures are deemed to be prominently located if:

A. They are posted on a web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form; or

B. They are located on the same page as an application or solicitation reply form, that contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable.

3. *Multiple accounts or varying terms.* If a tabular format is required to be used, card issuers offering several types of accounts may disclose the various terms for the accounts in a single table or may provide a separate table for each account. Similarly, if rates or other terms vary from state to state, card issuers may list the states and the various disclosures in a single table or in separate tables.

4. *Additional information.* The table containing the disclosures required by §226.5a should contain only the information required or permitted by this section. (See the commentary to §226.5a(b) for guidance on information permitted in the table.) Other credit information may be presented on or with an application or solicitation, provided such information appears outside the required table.

5. *Location of certain disclosures.* A card issuer has the option of disclosing any of the fees in §226.5a(b) (8) through (10) in the required table or outside the table.

6. *Terminology.* In general, §226.5a(a)(2)(iv) requires that the terminology used for the disclosures specified in §226.5a(b) be consistent with that used in the disclosures under §§226.6 and 226.7. This standard requires that the §226.5a(b) disclosures be close in meaning to those under §§226.6 and 226.7; however, the terminology used need not be identical. In addition, §226.5a(a)(2)(i) requires that the headings, content, and format of the tabular disclosures be substantially similar, but need not be identical, to the tables in Appendix G. A special rule applies to the grace period disclosure, however: the term *grace period* must be used, either in the heading or in the text of the disclosure.

7. *Deletion of inapplicable disclosures.* Generally, disclosures need only be given as applicable. Card issuers may, therefore, delete inapplicable headings and their corresponding boxes in the table. For example, if no transaction fee is imposed for purchases, the disclosure form may contain the heading *Transaction fee for purchases* and a box showing *none,* or the heading and box may be deleted from the table. There is an exception for the grace period disclosure, however: even if no grace period exists, that fact must be stated.

8. *Timing of disclosures for electronic applications or solicitations.* In all cases, a consumer must be able to access the disclosures at the time the blank application or reply form is made available by electronic communication, such as on a card issuer's Internet web site. Card issuers have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, card issuers may provide a link to electronic disclosures on or with the application (or reply

form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A card issuer need not confirm that the consumer has read the disclosures.

*5a(a)(3) Exceptions*

1. *Coverage.* Certain exceptions to the coverage of § 226.5a are stated in § 226.5a(a)(3); in addition, the requirements of § 226.5a do not apply to the following:

• Lines of credit accessed solely by account numbers

• Addition of a credit or charge card to an existing open-end plan

2. *Noncoverage of consumer initiated* requests. Applications provided to a consumer upon request are not covered by § 226.5a, even if the request is made in response to the card issuer's invitation to apply for a card account. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application, the application sent in response to the consumer's request need not contain the disclosures required under § 226.5a. Similarly, if the card issuer invites consumers to call and make an oral application on the telephone, § 226.5a does not apply to the application made by the consumer. If, however, the card issuer calls a consumer or initiates a telephone discussion with a consumer about opening a card account and contemporaneously takes an oral application, such applications are subject to § 226.5a, specifically § 226.5a(d).

3. *General purpose applications.* The requirements of this section do not apply to general purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account.

*5a(a)(5) Certain Fees that Vary by State*

1. *Manner of disclosing range.* If the card issuer discloses a range of fees instead of disclosing the amount of the fee imposed in each state, the range may be stated as the lowest authorized fee (zero, if there are one or more states where no fee applies) to the highest authorized fee.

*5a(b) Required Disclosures*

*5a(b)(1) Annual Percentage Rate*

1. *Periodic rate.* The periodic rate, expressed as such, may be disclosed in the table in addition to the required disclosure of the corresponding annual percentage rate.

2. *Variable-rate accounts—definition.* For purposes of § 226.5a(b)(1), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the commentary to § 226.6(a)(2) for examples of variable-rate plans.)

3. *Variable-rate accounts—rates in effect.* For variable-rate disclosures in direct mail applications and solicitations subject to § 226.5a(c), and in applications and solicitations made available to the general public subject to § 226.5a(e), the rules concerning accuracy of the annual percentage rate are stated in § 226.5a(b)(1)(ii). For variable-rate disclosures in telephone applications and solicitations subject to § 226.5a(d), the card issuer must provide an annual percentage rate currently applicable when oral disclosures are provided under § 226.5a(d)(1). For the alternate disclosures under § 226.5a(d)(2), the card issuer must provide the annual percentage rate in effect at the time the disclosures are mailed or delivered. A rate in effect also includes the rate as of a specified date (which rate is then updated from time to time, for example, each calendar month) or an estimated rate provided in accordance with § 226.5(c).

4. *Variable-rate accounts—other disclosures.* In describing how the applicable rate will be determined, the card issuer must identify the index or formula and disclose any margin or spread added to the index or formula in setting the rate. The card issuer may disclose the margin or spread as a range of the highest and lowest margins that may be applicable to the account. A disclosure of any applicable limitations on rate increases or decreases may also be included in the table.

5. *Introductory rates—discounted rates.* If the initial rate is temporary and is lower than the rate that will apply after the temporary rate expires, the card issuer must disclose the annual percentage rate that would otherwise apply to the account. In a fixed-rate account, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the index or formula applicable to the account in accordance with the rules in § 226.5a(b)(1)(ii) and comment 5a(b)(1)–3. An initial discounted rate may be provided in the table along with the rate required to be disclosed if the card issuer also discloses the time period during which the introductory rate will remain in effect.

6. *Introductory rates—premium rates.* If the initial rate is temporary and is higher than the permanently applicable rate, the card issuer must disclose the initial rate in the table. The initial rate must be in at least 18-point type unless the issuer also discloses in the table the permanently applicable rate. The issuer may disclose in the table the permanently applicable rate that would otherwise apply if the issuer also discloses the time period during which the initial rate will remain in effect. In that case, the permanently applicable rate must be in at least 18-point type.

7. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose in the table the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must also disclose in the table the index and the margin as well as the specific event or events that may result in the increased rate, such as ''applies to accounts 60 days late.'' If the penalty rate cannot be determined at the time disclosures are given, the issuer must provide an explanation of the specific event or events that may result in imposing an increased rate. In describing the specific event or events that may result in an increased rate, issuers need not be as detailed as for the disclosures required under §226.6(a)(2). For issuers using a tabular format, the specific event or events must be placed outside the table and an asterisk or other means shall be used to direct the consumer to the additional information. At its option, the issuer may include in the explanation of the penalty rate the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The issuer need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

*5a(b)(2) Fees for Issuance or Availability*

1. *Membership fees.* Membership fees for opening an account must be disclosed under this paragraph. A membership fee to join an organization that provides a credit or charge card as a privilege of membership must be disclosed only if the card is issued automatically upon membership. Such a fee need not be disclosed if membership results merely in eligibility to apply for an account.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) should not be disclosed in the table if the basic account may be opened without paying such fees.

3. *One-time fees.* Disclosure of non-periodic fees is limited to fees related to opening the account, such as one-time membership fees. The following are examples of fees that should not be disclosed in the table:

- Fees for reissuing a lost or stolen card
- Statement reproduction fees
- Application fees described in §226.4(c)(1)

4. *Waived or reduced fees.* If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be provided in the table in addition to the required fees if the card issuer also discloses how long the fees or waivers will remain in effect.

5. *Fees stated as annual amount.* Fees imposed periodically must be stated as an annual total. For example, if a fee is imposed quarterly, the disclosures would state the total amount of the fees for one year. (See, however, the commentary to §226.9(e) with regard to disclosure of such fees in renewal notices.)

*5a(b)(4) Transaction Charges*

1. *Charges imposed by person other than card issuer.* Charges imposed by a third party, such as a seller of goods, would not be disclosed under this section; the third party would be responsible for disclosing the charge under §226.9(d)(1).

*5a(b)(5) Grace Period*

1. *How disclosure is made.* The card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read ''30 days'' or ''30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date).''

*5a(b)(6) Balance Computation Method*

1. *Form of disclosure.* In cases where the card issuer uses a balance calculation method that is identified by name in the regulation, the card issuer may only disclose the name of the method in the table. In cases where the card issuer uses a balance computation method that is not identified by name in the regulation, the disclosure in the table should clearly explain the method in as much detail as set forth in the descriptions of balance methods in section 226.5a(g). The explanation need not be as detailed as that required for the disclosures under §226.6(a)(3). (See the commentary to §226.5a(g) for guidance on particular methods.)

2. *Determining the method.* In determining the appropriate balance computation method for purchases for disclosure purposes, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method will include new purchases or cover two billing cycles only if purchase balances are not paid within the grace period, the card issuer would disclose the name of the average daily balance method that includes new purchases or covers two billing cycles, respectively. The card issuer should not assume the existence of a purchase balance, however, in making other disclosures under §226.5a(b).

*5a(b)(7) Statement on Charge Card Payments*

1. *Applicability and content.* The disclosure that charges are payable upon receipt of the periodic statement is applicable only to

charge card accounts. In making this disclosure, the card issuer may make such modifications as are necessary to more accurately reflect the circumstances of repayment under the account. For example, the disclosure might read, ''Charges are due and payable upon receipt of the periodic statement and must be paid no later than 15 days after receipt of such statement.''

*5a(b)(8) Cash Advance Fee*

1. *Applicability*. The card issuer must disclose only those fees it imposes for a cash advance that are finance charges under §226.4. For example, a charge for a cash advance at an automated teller machine (ATM) would be disclosed under §226.5a(b)(8) if no similar charge is imposed for ATM transactions not involving an extension of credit. (See comment 4(a)–5 for a description of such a fee.)

*5a(b)(9) Late Payment Fee*

1. *Applicability*. The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (See the commentary to §226.4(c)(2) for additional guidance on late payment fees.)

*5a(b)(10) Over-the-Limit Fee*

1. *Applicability*. The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded.

*5a(c) Direct Mail Applications and Solicitations*

1. *Accuracy*. In general, disclosures in direct mail applications and solicitations must be accurate as of the time of mailing. (An accurate variable annual percentage rate is one in effect within 60 days before mailing.)

2. *Mailed publications*. Applications or solicitations contained in generally available publications mailed to consumers (such as subscription magazines) are subject to the requirements applicable to *take-ones* in §226.5a(e), rather than the direct mail requirements of §226.5a(c). However, if a primary purpose of a card issuer's mailing is to offer credit or charge card accounts—for example, where a card issuer ''prescreens'' a list of potential cardholders using credit criteria, and then mails to the targeted group its catalog containing an application or a solicitation for a card account—the direct mail rules apply. In addition, a card issuer may use a single application form as a *take-one* (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of §226.5a(c) even when the form is used as a *take-one*—that is, by presenting the required §226.5a disclosures in a tabular format. When used in a direct mailing, the credit term disclosures must be accurate as of the mailing date whether or not the §226.5a(e)(1) (ii) and (iii) disclosures are included; when used in a take-one, the disclosures must be accurate for as long as the take-one forms remain available to the public if the §226.5a(e)(1) (ii) and (iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date.)

*5a(d) Telephone Applications and Solicitations*

1. *Coverage*. This paragraph applies if:

• A telephone conversation between a card issuer and consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a *preapproved* telephone solicitation).

• The card issuer initiates the contact and at the same time takes application information over the telephone.

This paragraph does not apply to:

• Telephone applications initiated by the consumer.

• Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides either during the telephone conversation or later not to issue the card.

*5a(e) Applications and Solicitations Made Available to General Public*

1. *Coverage*. Applications and solicitations made available to the general public include what are commonly referred to as *take-one* applications typically found at counters in banks and retail establishments, as well as applications contained in catalogs, magazines and other generally available publications. In the case of credit unions, this paragraph applies to applications and solicitations to open card accounts made available to those in the general field of membership.

2. *Cross-selling*. If a card issuer invites a consumer to apply for a credit or charge card (for example, where the issuer engages in cross-selling), an application provided to the consumer at the consumer's request is not considered an application made available to the general public and therefore is not subject to §226.5a(e). For example, the following are not covered:

• A consumer applies in person for a car loan at a financial institution and the loan officer invites the consumer to apply for a credit or charge card account; the consumer accepts the invitation.

• An employee of a retail establishment, in the course of processing a sales transaction using a bank credit card, asks a customer if he or she would like to apply for the retailer's credit or charge card; the customer responds affirmatively.

3. *Toll-free telephone number.* If a card issuer, in complying with any of the disclosure options of §226.5a(e), provides a telephone number for consumers to call to obtain credit information, the number must be toll-free for nonlocal calls made from an area code other than the one used in the card issuer's dialing area. Alternatively, a card issuer may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

*5a(e)(1) Disclosure of Required Credit Information*

1. *Date of printing.* Disclosure of the month and year fulfills the requirement to disclose the date an application was printed.

2. *Form of disclosures.* The disclosures specified in §226.5a(e)(1) (ii) and (iii) may appear either in or outside the table containing the required credit disclosures.

*5a(e)(2) Inclusion of Certain Initial Disclosures*

1. *Accuracy of disclosures.* The disclosures required by §226.5a(e)(2) generally must be current as of the time they are made available to the public. Disclosures are considered to be made available at the time they are placed in public locations (in the case of *take-ones*) or mailed to consumers (in the case of publications).

2. *Accuracy—exception.* If a card issuer discloses all the information required by §226.5a(e)(1)(ii) on the application or solicitation, the disclosures under §226.5a(e)(2) need only be current as of the date of printing. (A current variable annual percentage rate would be one in effect within 30 days before printing.)

*5a(e)(3) No Disclosure of Credit Information*

1. *When disclosure option available.* A card issuer may use this option only if the issuer does not include on or with the application or solicitation any statement that refers to the credit disclosures required by §226.5a(b). Statements such as *no annual fee, low interest rate, favorable rates*, and *low costs* are deemed to refer to the required credit disclosures and, therefore, may not be included on or with the solicitation or application, if the card issuer chooses to use this option.

*5a(e)(4) Prompt Response to Requests for Information*

1. *Prompt disclosure.* Information is promptly disclosed if it is given within 30 days of a consumer's request for information but in no event later than delivery of the credit or charge card.

2. *Information disclosed.* When a consumer requests credit information, card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with §226.5a(e) (1) or (2) and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the issuer need only provide the items of information that have changed from those previously disclosed on or with the application or solicitation. If a consumer requests information about particular items, the card issuer need only provide the requested information. If, however, the card issuer has made disclosures in accordance with the option in §226.5a(e)(3) and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information must be given.

3. *Manner of response.* A card issuer's response to a consumer's request for credit information may be provided orally or in writing, regardless of the manner in which the consumer's request is received by the issuer. Furthermore, the card issuer may provide the information listed in either §226.5a(e) (1) or (2). Information provided in writing need not be in a tabular format.

*5a(f) Special Charge Card Rule—Card Issuer and Person Extending Credit Not the Same Person*

1. *Duties of charge card issuer.* Although the charge card issuer is not required to disclose information about the underlying open-end credit plan if the card issuer meets the conditions set forth in §226.5a(f), the card issuer must disclose the information relating to the charge card plan itself.

2. *Duties of creditor maintaining open-end plan.* Section 226.5a does not impose disclosure requirements on the creditor that maintains the underlying open-end credit plan. This is the case even though the creditor offering the open-end credit plan may be considered an agent of the charge card issuer. (See comment 2(a)(7)–1.)

3. *Form of disclosures.* The disclosures required by §226.5a(f) may appear either in or outside the table containing the required credit disclosures in circumstances where a tabular format is required.

*5a(g) Balance Computation Methods Defined*

1. *Daily balance method.* Card issuers using the daily balance method may disclose it using the name *average daily balance (including new purchases)* or *average daily balance (excluding new purchases)*, as appropriate. Alternatively, such card issuers may explain the method. (See comment 7(e)–5 for a discussion of the daily balance method.)

2. *Two-cycle average daily balance methods.* The *two-cycle average daily balance* methods described in §226.5a(g)(2) (i) and (ii) include those methods in which the average daily balances for two billing cycles may be added together to compute the finance charge.

Such methods also include those in which a periodic rate is applied separately to the balance in each cycle, and the resulting finance charges are added together. The method is a *two-cycle average daily balance* even if the finance charge is based on both the current and prior cycle balances only under certain circumstances, such as when purchases during a prior cycle were carried over into the current cycle and no finance charge was assessed during the prior cycle. Furthermore, the method is a *two-cycle average daily balance method* if the balances for both the current and prior cycles are average daily balances, even if those balances are figured differently. For example, the name *two-cycle average daily balance (excluding new purchases)* should be used to describe a method in which the finance charge for the current cycle, figured on an average daily balance excluding new purchases, will be added to the finance charge for the prior cycle, figured on an average daily balance of only new purchases during that prior cycle.

*Section 226.5b Requirements for Home Equity Plans*

1. *Coverage.* This section applies to all open-end credit plans secured by the consumer's *dwelling,* as defined in §226.2(a)(19), and is not limited to plans secured by the consumer's principal dwelling. (See the commentary to §226.3(a), which discusses whether transactions are consumer or business-purpose credit, for guidance on whether a home equity plan is subject to Regulation Z.)

2. *Changes to home equity plans entered into on or after November 7, 1989.* Section 226.9(c) applies if, by written agreement under §226.5b(f)(3)(iii), a creditor changes the terms of a home equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on different terms. A new plan results, however, if the plan is renewed (with or without changes to the terms) after the scheduled expiration. The new plan is subject to all open-end credit rules, including §§226.5b, 226.6, and 226.15.

3. *Transition rules and renewals of preexisting plans.* The requirements of this section do not apply to home equity plans entered into before November 7, 1989. The requirements of this section also do not apply if the original consumer, on or after November 7, 1989, renews a plan entered into prior to that date (with or without changes to the terms). If, on or after November 7, 1989, a security interest in the consumer's dwelling is added to a line of credit entered into before that date, the substantive restrictions of this section apply for the remainder of the plan, but no new disclosures are required under this section.

4. *Disclosure of repayment phase—applicability of requirements.* Some plans provide in the initial agreement for a period during which no further draws may be taken and repayment of the amount borrowed is made. All of the applicable disclosures in this section must be given for the repayment phase. Thus, for example, a creditor must provide payment information about the repayment phase as well as about the draw period, as required by §226.5b(d)(5). If the rate that will apply during the repayment phase is fixed at a known amount, the creditor must provide an annual percentage rate under §226.5b(d)(6) for that phase. If, however, a creditor uses an index to determine the rate that will apply at the time of conversion to the repayment phase—even if the rate will thereafter be fixed—the creditor must provide the information in §226.5b(d)(12), as applicable.

5. *Payment terms—applicability of closed-end provisions and substantive rules.* All payment terms that are provided for in the initial agreement are subject to the requirements of subpart B and not subpart C of the regulation. Payment terms that are subsequently added to the agreement may be subject to subpart B or to subpart C, depending on the circumstances. The following examples apply these general rules to different situations:

- If the initial agreement provides for a repayment phase or for other payment terms such as options permitting conversion of part or all of the balance to a fixed rate during the draw period, these terms must be disclosed pursuant to §§226.5b and 226.6, and not under subpart C. Furthermore, the creditor must continue to provide periodic statements under §226.7 and comply with other provisions of subpart B (such as the substantive requirements of §226.5b(f)) throughout the plan, including the repayment phase.
- If the consumer and the creditor enter into an agreement during the draw period to repay all or part of the principal balance on different terms (for example, with a fixed rate of interest) and the amount of available credit will be replenished as the principal balance is repaid, the creditor must continue to comply with subpart B. For example, the creditor must continue to provide periodic statements and comply with the substantive requirements of §226.5b(f) throughout the plan.
- If the consumer and creditor enter into an agreement during the draw period to repay all or part of the principal balance and the amount of available credit will not be replenished as the principal balance is repaid, the creditor must give closed-end credit disclosures pursuant to subpart C for that new agreement. In such cases, subpart B, including the substantive rules, does not apply to the closed-end credit transaction, although it will continue to apply to any remaining open-end credit available under the plan.

6. *Spreader clause.* When a creditor holds a mortgage or deed of trust on the consumer's dwelling and that mortgage or deed of trust contains a *spreader clause* (also known as a *dragnet* or cross-collateralization clause),

subsequent occurrences such as the opening of an open-end plan are subject to the rules applicable to home equity plans to the same degree as if a security interest were taken directly to secure the plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.

*5b(a) Form of Disclosures*

*5b(a)(1) General*

1. *Written disclosures.* The disclosures required under this section must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. (See the commentary to §226.6(e) for special rules when disclosures required under §226.5b(d) are given in a retainable form.)

2. *Disclosure of annual percentage rate—more conspicuous requirement.* As provided in §226.5(a)(2), when the term *annual percentage rate* is required to be disclosed with a number, it must be more conspicuous than other required disclosures.

3. *Segregation of disclosures.* While most of the disclosures must be grouped together and segregated from all unrelated information, the creditor is permitted to include information that explains or expands on the required disclosures, including, for example:

- Any prepayment penalty
- How a substitute index may be chosen
- Actions the creditor may take short of terminating and accelerating an outstanding balance
- Renewal terms
- Rebate of fees

An example of information that does not explain or expand on the required disclosures and thus cannot be included is the creditor's underwriting criteria, although the creditor could provide such information separately from the required disclosures.

4. *Method of providing disclosures.* A creditor may provide a single disclosure form for all of its home equity plans, as long as the disclosure describes all aspects of the plans. For example, if the creditor offers several payment options, all such options must be disclosed. (See, however, the commentary to §226.5b(d)(5)(iii) and (d)(12) (x) and (xi) for disclosure requirements relating to these provisions.) If any aspects of a plan are linked together, the creditor must disclose clearly the relationship of the terms to each other. For example, if the consumer can only obtain a particular payment option in conjunction with a certain variable-rate feature, this fact must be disclosed. A creditor has the option of providing separate disclosure forms for multiple options or variations in features. For example, a creditor that offers different payment options for the draw period may prepare separate disclosure forms for the two payment options. A creditor using this alternative, however, must include a statement on each disclosure form that the consumer should ask about the creditor's other home equity programs. (This disclosure is required only for those programs available generally to the public. Thus, if the only other programs available are employee preferred-rate plans, for example, the creditor would not have to provide this statement.) A creditor that receives a request for information about other available programs must provide the additional disclosures as soon as reasonably possible.

*5b(a)(2) Precedence of Certain Disclosures*

1. *Precedence rule.* The list of conditions provided at the creditor's option under §226.5b(d)(4)(iii) need not precede the other disclosures.

*5b(b) Time of Disclosures*

1. *Mail and telephone applications.* If the creditor sends applications through the mail, the disclosures and a brochure must accompany the application. If an application is taken over the telephone, the disclosures and brochure may be delivered or mailed within three business days of taking the application. If an application is mailed to the consumer following a telephone request, however, the creditor also must send the disclosures and a brochure along with the application.

2. *General purpose applications.* The disclosures and a brochure need not be provided when a general purpose application is given to a consumer unless (1) the application or materials accompanying it indicate that it can be used to apply for a home equity plan or (2) the application is provided in response to a consumer's specific inquiry about a home equity plan. On the other hand, if a general purpose application is provided in response to a consumer's specific inquiry only about credit other than a home equity plan, the disclosures and brochure need not be provided even if the application indicates it can be used for a home equity plan, unless it is accompanied by promotional information about home equity plans.

3. *Publicly-available applications.* Some creditors make applications for home equity plans, such as *take-ones,* available without the need for a consumer to request them. These applications must be accompanied by the disclosures and a brochure, such as by attaching the disclosures and brochure to the application form.

4. *Response cards.* A creditor may solicit consumers for its home equity plan by mailing a *response card* which the consumer returns to the creditor to indicate interest in the plan. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the

plan, the creditor need not send the disclosures and brochure with the response card.

5. *Denial or withdrawal of application.* In situations where footnote 10a permits the creditor a three-day delay in providing disclosures and the brochure, if the creditor determines within that period that an application will not be approved, the creditor need not provide the consumer with the disclosures or brochure. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the disclosures or brochure.

6. *Intermediary agent or broker.* In determining whether or not an application involves an *intermediary agent or broker* as discussed in footnote 10a, creditors should consult the provisions in comment 19(b)–3.

7. *Applications available by electronic communication.* In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application or reply form is made available by electronic communication, such as on a creditor's Internet web site. Creditors have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer the consumer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, creditors may provide a link to electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A creditor need not confirm that the consumer has read the disclosures or brochure.

*5b(c) Duties of Third Parties*

1. *Disclosure requirements.* Although third parties who give applications to consumers for home equity plans must provide the brochure required under §226.5b(e) in all cases, such persons need provide the disclosures required under §226.5b(d) only in certain instances. A third party has no duty to obtain disclosures about a creditor's home equity plan or to create a set of disclosures based on what it knows about a creditor's plan. If, however, a creditor provides the third party with disclosures along with its application form, the third party must give the disclosures to the consumer with the application form. The duties under this section are those of the third party; the creditor is not responsible for ensuring that a third party complies with those obligations. If an intermediary agent or broker takes an application over the telephone or receives an application contained in a magazine or other publication, footnote 10a permits that person to mail the disclosures and brochure within three business days of receipt of the application. (See the commentary to §226.5b(h) about imposition of nonrefundable fees.)

*5b(d) Content of Disclosures*

1. *Disclosures given as applicable.* The disclosures required under this section need be made only as applicable. Thus, for example, if negative amortization cannot occur in a home equity plan, a reference to it need not be made.

2. *Duty to respond to requests for information.* If the consumer, prior to the opening of a plan, requests information as suggested in the disclosures (such as the current index value or margin), the creditor must provide this information as soon as reasonably possible after the request.

*5b(d)(1) Retention of Information*

1. *When disclosure not required.* The creditor need not disclose that the consumer should make or otherwise retain a copy of the disclosures if they are retainable—for example, if the disclosures are not part of an application that must be returned to the creditor to apply for the plan.

*5b(d)(2) Conditions for Disclosed Terms*

*Paragraph 5b(d)(2)(i)*

1. *Guaranteed terms.* The requirement that the creditor disclose the time by which an application must be submitted to obtain the disclosed terms does not require the creditor to guarantee any terms. If a creditor chooses not to guarantee any terms, it must disclose that all of the terms are subject to change prior to opening the plan. The creditor also is permitted to guarantee some terms and not others, but must indicate which terms are subject to change.

2. *Date for obtaining disclosed terms.* The creditor may disclose either a specific date or a time period for obtaining the disclosed terms. If the creditor discloses a time period, the consumer must be able to determine from the disclosure the specific date by which an application must be submitted to obtain any guaranteed terms. For example, the disclosure might read, "To obtain the following terms, you must submit your application within 60 days after the date appearing on this disclosure," provided the disclosure form also shows the date.

*Paragraph 5b(d)(2)(ii)*

1. *Relation to other provisions.* Creditors should consult the rules in §226.5b(g) regarding refund of fees.

*5b(d)(4) Possible Actions by Creditor*

*Paragraph 5b(d)(4)(i)*

1. *Fees imposed upon termination.* This disclosure applies only to fees (such as penalty

or prepayment fees) that the creditor imposes if it terminates the plan prior to normal expiration. The disclosure does not apply to fees that are imposed either when the plan expires in accordance with the agreement or if the consumer terminates the plan prior to its scheduled maturity. In addition, the disclosure does not apply to fees associated with collection of the debt, such as attorneys fees and court costs, or to increases in the annual percentage rate linked to the consumer's failure to make payments. The actual amount of the fee need not be disclosed.

2. *Changes specified in the initial agreement.* If changes may occur pursuant to §226.5b(f)(3)(i), a creditor must state that certain changes will be implemented as specified in the initial agreement.

*Paragraph 5b(d)(4)(iii)*

1. *Disclosure of conditions.* In making this disclosure, the creditor may provide a highlighted copy of the document that contains such information, such as the contract or security agreement. The relevant items must be distinguished from the other information contained in the document. For example, the creditor may provide a cover sheet that specifically points out which contract provisions contain the information, or may mark the relevant items on the document itself. As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in §§226.5b(f)(2)(i)–(iii), 226.5b(f)(3)(i) (regarding freezing the line when the maximum annual percentage rate is reached), and 226.5b(f)(3)(vi) or language that is substantially similar. The condition contained in §226.5b(f)(2)(iv) need not be stated. In describing specified changes that may be implemented during the plan, the creditor may provide a disclosure such as "Our agreement permits us to make certain changes to the terms of the line at specified times or upon the occurrence of specified events."

2. *Form of disclosure.* The list of conditions under §226.5b(d)(4)(iii) may appear with the segregated disclosures or apart from them. If the creditor elects to provide the list of conditions with the segregated disclosures, the list need not comply with the precedence rule in §226.5b(a)(2).

*5b(d)(5) Payment Terms*

*Paragraph 5b(d)(5)(i)*

1. *Length of the plan.* The combined length of the draw period and any repayment period need not be stated. If the length of the repayment phase cannot be determined because, for example, it depends on the balance outstanding at the beginning of the repayment period, the creditor must state that the length is determined by the size of the balance. If the length of the plan is indefinite (for example, because there is no time limit on the period during which the consumer can take advances), the creditor must state that fact.

2. *Renewal provisions.* If, under the credit agreement, a creditor retains the right to review a line at the end of the specified draw period and determine whether to renew or extend the draw period of the plan, the possibility of renewal or extension—regardless of its likelihood—should be ignored for purposes of the disclosures. For example, if an agreement provides that the draw period is five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years. (See the commentary accompanying §226.9(c)(1) dealing with change in terms requirements.)

*Paragraph 5b(d)(5)(ii)*

1. *Determination of the minimum periodic payment.* This disclosure must reflect how the minimum periodic payment is determined, but need only describe the principal and interest components of the payment. Other charges that may be part of the payment (as well as the balance computation method) may, but need not, be described under this provision.

2. *Fixed rate and term payment options during draw period.* If the home equity plan permits the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period, this feature must be disclosed. To illustrate, a variable-rate plan may permit a consumer to elect during a ten-year draw period to repay all or a portion of the balance over a three-year period at a fixed rate. The creditor must disclose the rules relating to this feature including the period during which the option can be selected, the length of time over which repayment can occur, any fees imposed for such a feature, and the specific rate or a description of the index and margin that will apply upon exercise of this choice. For example, the index and margin disclosure might state: "If you choose to convert any portion of your balance to a fixed rate, the rate will be the highest prime rate published in the 'Wall Street Journal' that is in effect at the date of conversion plus a margin." If the fixed rate is to be determined according to an index, it must be one that is outside the creditor's control and is publicly available in accordance with §226.5b(f)(1). The effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example required in §226.5b(d)(12)(xi).

3. *Balloon payments.* In programs where the occurrence of a balloon payment is possible, the creditor must disclose the possibility of a balloon payment even if such a payment is

uncertain or unlikely. In such cases, the disclosure might read, ''Your minimum payments may not be sufficient to fully repay the principal that is outstanding on your line. If they are not, you will be required to pay the entire outstanding balance in a single payment.'' In programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must state that fact. For example, the disclosure might read, ''Your minimum payments will not repay the principal that is outstanding on your line. You will be required to pay the entire outstanding balance in a single payment.'' In making this disclosure, the creditor is not required to use the term ''balloon payment.'' The creditor also is not required to disclose the amount of the balloon payment. (See, however, the requirement under §226.5b(d)(5)(iii).) The balloon payment disclosure does not apply in cases where repayment of the entire outstanding balance would occur only as a result of termination and acceleration. The creditor also need not make a disclosure about balloon payments if the final payment could not be more than twice the amount of other minimum payments under the plan.

*Paragraph 5b(d)(5)(iii)*

1. *Minimum periodic payment example.* In disclosing the payment example, the creditor may assume that the credit limit as well as the outstanding balance is $10,000 if such an assumption is relevant to calculating payments. (If the creditor only offers lines of credit for less than $10,000, the creditor may assume an outstanding balance of $5,000 instead of $10,000 in making this disclosure.) The example should reflect the payment comprised only of principal and interest. Creditors may provide an additional example reflecting other charges that may be included in the payment, such as credit insurance premiums. Creditors may assume that all months have an equal number of days, that payments are collected in whole cents, and that payments will fall on a business day even though they may be due on a non-business day. For variable-rate plans, the example must be based on the last rate in the historical example required in §226.5b(d)(12)(xi), or a more recent rate. In cases where the last rate shown in the historical example is different from the index value and margin (for example, due to a rate cap), creditors should calculate the rate by using the index value and margin. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.

2. *Representative examples.* In plans with multiple payment options within the draw period or within any repayment period, the creditor may provide representative examples as an alternative to providing examples for each payment option. The creditor may elect to provide representative payment examples based on three categories of payment options. The first category consists of plans that permit minimum payment of only accrued finance charges (*interest only* plans). The second category includes plans in which a fixed percentage or a fixed fraction of the outstanding balance or credit limit (for example, 2% of the balance or 1⁄180th of the balance) is used to determine the minimum payment. The third category includes all other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges. Creditors may classify their minimum payment arrangements within one of these three categories even if other features exist, such as varying lengths of a draw or repayment period, required payment of past due amounts, late charges, and minimum dollar amounts. The creditor may use a single example within each category to represent the payment options in that category. For example, if a creditor permits minimum payments of 1%, 2%, 3% or 4% of the outstanding balance, it may pick one of these four options and provide the example required under §226.5b(d)(5)(iii) for that option alone.

The example used to represent a category must be an option commonly chosen by consumers, or a typical or representative example. (See the commentary to §226.5b(d)(12) (x) and (xi) for a discussion of the use of representative examples for making those disclosures. Creditors using a representative example within each category must use the same example for purposes of the disclosures under §226.5b (d)(5)(iii) and (d)(12) (x) and (xi).) Creditors may use representative examples under §226.5b(d)(5) only with respect to the payment example required under paragraph (d)(5)(iii). Creditors must provide a full narrative description of all payment options under §226.5b(d)(5) (i) and (ii).

3. *Examples for draw and repayment periods.* Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods. In setting forth payment examples for any repayment period under this section (and the historical example under §226.5b(d)(12)(xi)), creditors should assume a $10,000 advance is taken at the beginning of the draw period and is reduced according to the terms of the plan. Creditors should not assume an additional advance is taken at any time, including at the beginning of any repayment period.

4. *Reverse mortgages.* Reverse mortgages, also known as reverse annuity or home equity conversion mortgages, in addition to permitting the consumer to obtain advances, may involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as

the consumer's death. Repayment of the reverse mortgage (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these plans, creditors must apply the following rules, as applicable:

• If the reverse mortgage has a specified period for advances and disbursements but repayment is due only upon occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the line at the time the draw period and our payments to you end. As provided in your agreement, your repayment may be rquired at a different time." The single payment should be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The example of the minimum payment under §226.5b(d)(5)(iii) should assume a single $10,000 draw.

• If the reverse mortgage has neither a specified period for advances or disbursements nor a specified repayment date and these terms will be determined solely by reference to future events, including the consumer's death, the creditor may assume that the draws and disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)

• In making the disclosures, the creditor must assume that all draws and disbursements and accrued interest will be paid by the consumer. For example, if the note has a non-recourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be drawn or disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement."

• Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The creditor must disclose the appreciation feature, including describing how the creditor's share will be determined, any limitations, and when the feature may be exercised.

*5b(d)(6) Annual Percentage Rate*

1. *Preferred-rate plans.* If a creditor offers a preferential fixed-rate plan in which the rate will increase a specified amount upon the occurrence of a specified event, the creditor must disclose the specific amount the rate will increase.

*5b(d)(7) Fees Imposed by Creditor*

1. *Applicability.* The fees referred to in §226.5b(d)(7) include items such as application fees, points, annual fees, transaction fees, fees to obtain checks to access the plan, and fees imposed for converting to a repayment phase that is provided for in the original agreement. This disclosure includes any fees that are imposed by the creditor to use or maintain the plan, whether the fees are kept by the creditor or a third party. For example, if a creditor requires an annual credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be specifically stated. Third party fees to open the plan that are initially paid by the consumer to the creditor may be included in this disclosure or in the disclosure under §226.5b(d)(8).

2. *Manner of describing fees.* Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit. The creditor may provide a stepped fee schedule in which a fee will increase a specified amount at a specified date. (See the discussion contained in the commentary to §226.5b(f)(3)(i).)

3. *Fees not required to be disclosed.* Fees that are not imposed to open, use, or maintain a plan, such as fees for researching an account, photocopying, paying late, stopping payment, having a check returned, exceeding the credit limit, or closing out an account do not have to be disclosed under this section. Credit report and appraisal fees imposed to investigate whether a condition permitting a freeze continues to exist—as discussed in the commentary to §226.5b(f)(3)(vi)—are not required to be disclosed under this section or §226.5b(d)(8).

4. *Rebates of closing costs.* If closing costs are imposed they must be disclosed, regardless of whether such costs may be rebated later (for example, rebated to the extent of

any interest paid during the first year of the plan).

5. *Terms used in disclosure.* Creditors need not use the terms *finance charge* or *other charge* in describing the fees imposed by the creditor under this section or those imposed by third parties under §226.5b(d)(8).

*5b(d)(8) Fees Imposed by Third Parties to Open a Plan*

1. *Applicability.* Section 226.5b(d)(8) applies only to fees imposed by third parties to open the plan. Thus, for example, this section does not require disclosure of a fee imposed by a government agency at the end of a plan to release a security interest. Fees to be disclosed include appraisal, credit report, government agency, and attorneys fees. In cases where property insurance is required by the creditor, the creditor either may disclose the amount of the premium or may state that property insurance is required. For example, the disclosure might state, ''You must carry insurance on the property that secures this plan.''

2. *Itemization of third-party fees.* In all cases creditors must state the total of third-party fees as a single dollar amount or a range except that the total need not include costs for property insurance if the creditor discloses that such insurance is required. A creditor has two options with regard to providing the more detailed information about third party fees. Creditors may provide a statement that the consumer may request more specific cost information about third party fees from the creditor. As an alternative to including this statement, creditors may provide an itemization of such fees (by type and amount) with the early disclosures. Any itemization provided upon the consumer's request need not include a disclosure about property insurance.

3. *Manner of describing fees.* A good faith estimate of the amount of fees must be provided. Creditors may provide, based on a typical or representative amount of credit, a range for such fees or state the dollar amount of such fees. Fees may be expressed on a unit cost basis, for example, $5 per $1,000 of credit.

4. *Rebates of third party fees.* Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to §226.5b(d)(7).)

*5b(d)(9) Negative Amortization*

1. *Disclosure required.* In transactions where the minimum payment will not or may not be sufficient to cover the interest that accrues on the outstanding balance, the creditor must disclose that negative amortization will or may occur. This disclosure is required whether or not the unpaid interest is added to the outstanding balance upon which interest is computed. A disclosure is not required merely because a loan calls for non-amortizing or partially amortizing payments.

*5b(d)(10) Transaction Requirements*

1. *Applicability.* A limitation on automated teller machine usage need not be disclosed under this paragraph unless that is the only means by which the consumer can obtain funds.

*5b(d)(12) Disclosures for Variable-Rate Plans*

1. *Variable-rate provisions.* Sample forms in appendix G–14 provide illustrative guidance on the variable-rate rules.

*Paragraph 5b(d)(12)(iv)*

1. *Determination of annual percentage rate.* If the creditor adjusts its index through the addition of a margin, the disclosure might read, ''Your annual percentage rate is based on the index plus a margin.'' The creditor is not required to disclose a specific value for the margin.

*Paragraph 5b(d)(12)(viii)*

1. *Preferred-rate provisions.* This paragraph requires disclosure of preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor.

2. *Provisions on conversion to fixed rates.* The commentary to §226.5b(d)(5)(ii) discusses the disclosure requirements for options permitting the consumer to convert from a variable rate to a fixed rate.

*Paragraph 5b(d)(12)(ix)*

1. *Periodic limitations on increases in rates.* The creditor must disclose any annual limitations on increases in the annual percentage rate. If the creditor bases its rate limitation on 12 monthly billing cycles, such a limitation should be treated as an annual cap. Rate limitations imposed on less than an annual basis must be stated in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, this must be expressed as a rate limitation for a six-month time period. If the creditor does not impose periodic limitations (annual or shorter) on rate increases, the fact that there are no annual rate limitations must be stated.

2. *Maximum limitations on increases in rates.* The maximum annual percentage rate that may be imposed under each payment option over the term of the plan (including the draw period and any repayment period provided for in the initial agreement) must be provided. The creditor may disclose this rate as a specific number (for example, 18%) or as a specific amount above the initial rate. For example, this disclosure might read, ''The

maximum annual percentage rate that can apply to your line will be 5 percentage points above your initial rate.'' If the creditor states the maximum rate as a specific amount above the initial rate, the creditor must include a statement that the consumer should inquire about the rate limitations that are currently available. If an initial discount is not taken into account in applying maximum rate limitations, that fact must be disclosed. If separate overall limitations apply to rate increases resulting from events such as the exercise of a fixed-rate conversion option or leaving the creditor's employ, those limitations also must be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations.

3. *Form of disclosures.* The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest periodic and maximum rate limitations that may be applicable to the creditor's home equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.

*Paragraph 5b(d)(12)(x)*

1. *Maximum rate payment example.* In calculating the payment creditors should assume the maximum rate is in effect. Any discounted or premium initial rates or periodic rate limitations should be ignored for purposes of this disclosure. If a range is used to disclose the maximum cap under §226.5b(d)(12)(ix), the highest rate in the range must be used for the disclosure under this paragraph. As an alternative to making disclosures based on each payment option, the creditor may choose a representative example within the three categories of payment options upon which to base this disclosure. (See the commentary to §226.5b(d)(5).) However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods. Creditors should calculate the example for the repayment period based on an assumed $10,000 balance. (See the commentary to §226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

2. *Time the maximum rate could be reached.* In stating the date or time when the maximum rate could be reached, creditors should assume the rate increases as rapidly as possible under the plan. In calculating the date or time, creditors should factor in any discounted or premium initial rates and periodic rate limitations. This disclosure must be provided for the draw phase and any repayment phase. Creditors should assume the index and margin shown in the last year of the historical example (or a more recent rate) is in effect at the beginning of each phase.

*Paragraph 5b(d)(12)(xi)*

1. *Index movement.* Index values and annual percentage rates must be shown for the entire 15 years of the historical example and must be based on the most recent 15 years. The example must be updated annually to reflect the most recent 15 years of index values as soon as reasonably possible after the new index value becomes available. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values have been available and may start the historical example at the year for which values are first available.

2. *Selection of index values.* The historical example must reflect the method of choosing index values for the plan. For example, if an average of index values is used in the plan, averages must be used in the example, but if an index value as of a particular date is used, a single index value must be shown. The creditor is required to assume one date (or one period, if an average is used) within a year on which to base the history of index values. The creditor may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the example. Only one index value per year need be shown, even if the plan provides for adjustments to the annual percentage rate or payment more than once in a year. In such cases, the creditor can assume that the index rate remained constant for the full year for the purpose of calculating the annual percentage rate and payment.

3. *Selection of margin.* A value for the margin must be assumed in order to prepare the example. A creditor may select a representative margin that it has used with the index during the six months preceding preparation of the disclosures and state that the margin is one that it has used recently. The margin selected may be used until the creditor annually updates the disclosure form to reflect the most recent 15 years of index values.

4. *Amount of discount or premium.* In reflecting any discounted or premium initial rate, the creditor may select a discount or premium that it has used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the example for as long as it is in effect. The creditor may assume that a discount or premium that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example.

5. *Rate limitations.* Limitations on both periodic and maximum rates must be reflected in the historical example. If ranges of rate limitations are provided under §226.5b(d)(12)(ix), the highest rates provided in those ranges must be used in the example. Rate limitations that may apply more often than annually should be treated as if they were annual limitations. For example, if a creditor imposes a 1% cap every six months, this should be reflected in the example as if it were a 2% annual cap.

6. *Assumed advances.* The creditor should assume that the $10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan, and that the consumer takes no subsequent draws. As discussed in the commentary to §226.5b(d)(5), creditors should not assume an additional advance is taken at the beginning of any repayment period. If applicable, the creditor may assume the $10,000 is both the advance and the credit limit. (See the commentary to §226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

7. *Representative payment options.* The creditor need not provide an historical example for all of its various payment options, but may select a representative payment option within each of the three categories of payments upon which to base its disclosure. (See the commentary to §226.5b(d)(5).)

8. *Payment information.* The payment figures in the historical example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted initial rate, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have applied to the plan. The historical example should include payments for as much of the length of the plan as would occur during a 15-year period. For example:

• If the draw period is 10 years and the repayment period is 15 years, the example should illustrate the entire 10-year draw period and the first 5 years of the repayment period.

• If the length of the draw period is 15 years and there is a 15-year repayment phase, the historical example must reflect the payments for the 15-year draw period and would not show any of the repayment period. No additional historical example would be required to reflect payments for the repayment period.

• If the length of the plan is less than 15 years, payments in the historical example need only be shown for the number of years in the term. In such cases, however, the creditor must show the index values, margin and annual percentage rates and continue to reflect all significant plan terms such as rate limitations for the entire 15 years.

A creditor need show only a single payment per year in the example, even though payments may vary during a year. The calculations should be based on the actual payment computation formula, although the creditor may assume that all months have an equal number of days. The creditor may assume that payments are made on the last day of the billing cycle, the billing date or the payment due date, but must be consistent in the manner in which the period used to illustrate payment information is selected. Information about balloon payments and remaining balance may, but need not, be reflected in the example.

9. *Disclosures for repayment period.* The historical example must reflect all features of the repayment period, including the appropriate index values, margin, rate limitations, length of the repayment period, and payments. For example, if different indices are used during the draw and repayment periods, the index values for that portion of the 15 years that reflect the repayment period must be the values for the appropriate index.

10. *Reverse mortgages.* The historical example for reverse mortgages should reflect 15 years of index values and annual percentage rates, but the payment column should be blank until the year that the single payment will be made, assuming that payment is estimated to occur within 15 years. (See the commentary to §226.5b(d)(5) for a discussion of reverse mortgages.)

*5b(e) Brochure*

1. *Substitutes.* A brochure is a suitable substitute for the Board's home equity brochure if it is, at a minimum, comparable to the Board's brochure in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the Board's brochure.

2. *Effect of third party delivery of brochure.* If a creditor determines that a third party has provided a consumer with the required brochure pursuant to §226.5b(c), the creditor need not give the consumer a second brochure.

*5b(f) Limitations on Home Equity Plans*

1. *Coverage.* Section 226.5b(f) limits both actions that may be taken and language that may be included in contracts, and applies to any assignee or holder as well as to the original creditor. The limitations apply to the draw period and any repayment period, and to any renewal or modification of the original agreement.

*Paragraph 5b(f)(1)*

1. *External index.* A creditor may change the annual percentage rate for a plan only if the change is based on an index outside the creditor's control. Thus, a creditor may not make rate changes based on its own prime

rate or cost of funds and may not reserve a contractual right to change rates at its discretion. A creditor is permitted, however, to use a published prime rate, such as that in the Wall Street Journal, even if the bank's own prime rate is one of several rates used to establish the published rate.

2. *Publicly available.* The index must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify rates imposed under the plan.

3. *Provisions not prohibited.* This paragraph does not prohibit rate changes that are specifically set forth in the agreement. For example, stepped-rate plans, in which specified rates are imposed for specified periods, are permissible. In addition, preferred-rate provisions, in which the rate increases by a specified amount upon the occurrence of a specified event, also are permissible.

*Paragraph 5b(f)(2)*

1. *Limitations on termination and acceleration.* In general, creditors are prohibited from terminating and accelerating payment of the outstanding balance before the scheduled expiration of a plan. However, creditors may take these actions in the four circumstances specified in §226.5b(f)(2). Creditors are not permitted to specify in their contracts any other events that allow termination and acceleration beyond those permitted by the regulation. Thus, for example, an agreement may not provide that the balance is payable on demand nor may it provide that the account will be terminated and the balance accelerated if the rate cap is reached.

2. *Other actions permitted.* If an event permitting termination and acceleration occurs, a creditor may instead take actions short of terminating and accelerating. For example, a creditor could temporarily or permanently suspend further advances, reduce the credit limit, change the payment terms, or require the consumer to pay a fee. A creditor also may provide in its agreement that a higher rate or higher fees will apply in circumstances under which it would otherwise be permitted to terminate the plan and accelerate the balance. A creditor that does not immediately terminate an account and accelerate payment or take another permitted action may take such action at a later time, provided one of the conditions permitting termination and acceleration exists at that time.

*Paragraph 5b(f)(2)(i)*

1. *Fraud or material misrepresentation.* A creditor may terminate a plan and accelerate the balance if there has been fraud or material misrepresentation by the consumer in connection with the plan. This exception includes fraud or misrepresentation at any time, either during the application process or during the draw period and any repayment period. What constitutes fraud or misrepresentation is determined by applicable state law and may include acts of omission as well as overt acts, as long as any necessary intent on the part of the consumer exists.

*Paragraph 5b(f)(2)(ii)*

1. *Failure to meet repayment terms.* A creditor may terminate a plan and accelerate the balance when the consumer fails to meet the repayment terms provided for in the agreement. However, a creditor may terminate and accelerate under this provision only if the consumer actually fails to make payments. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under this provision if the consumer fails to meet the repayment terms of the agreement. This section does not override any state or other law that requires a right-to-cure notice, or otherwise places a duty on the creditor before it can terminate a plan and accelerate the balance.

*Paragraph 5b(f)(2)(iii)*

1. *Impairment of security.* A creditor may terminate a plan and accelerate the balance if the consumer's action or inaction adversely affects the creditor's security for the plan, or any right of the creditor in that security. Action or inaction by third parties does not, in itself, permit the creditor to terminate and accelerate.

2. *Examples.* A creditor may terminate and accelerate, for example, if:

- The consumer transfers title to the property or sells the property without the permission of the creditor
- The consumer fails to maintain required insurance on the dwelling
- The consumer fails to pay taxes on the property
- The consumer permits the filing of a lien senior to that held by the creditor
- The sole consumer obligated on the plan dies
- The property is taken through eminent domain
- A prior lienholder forecloses

By contrast, the filing of a judgment against the consumer would permit termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. If the consumer commits waste or otherwise destructively uses or fails to maintain the property such that the action adversely affects the security, the plan may be terminated and the balance accelerated. Illegal use of the property by the consumer would permit termination and acceleration if it subjects the property to seizure. If one of two consumers obligated on a plan dies the creditor may terminate the plan and accelerate the balance if the security is adversely affected. If the consumer moves out of the dwelling that secures the plan and that action adversely affects the security, the creditor may terminate a plan and accelerate the balance.

*Paragraph 5b(f)(3)*

1. *Scope of provision.* In general, a creditor may not change the terms of a plan after it is opened. For example, a creditor may not increase any fee or impose a new fee once the plan has been opened, even if the fee is charged by a third party, such as a credit reporting agency, for a service. The change of terms prohibition applies to all features of a plan, not only those required to be disclosed under this section. For example, this provision applies to charges imposed for late payment, although this fee is not required to be disclosed under §226.5b(d)(7).

2. *Charges not covered.* There are three charges not covered by this provision. A creditor may pass on increases in taxes since such charges are imposed by a governmental body and are beyond the control of the creditor. In addition, a creditor may pass on increases in premiums for property insurance that are excluded from the finance charge under §226.4(d)(2), since such insurance provides a benefit to the consumer independent of the use of the line and is often maintained notwithstanding the line. A creditor also may pass on increases in premiums for credit insurance that are excluded from the finance charge under §226.4(d)(1), since the insurance is voluntary and provides a benefit to the consumer.

*Paragraph 5b(f)(3)(i)*

1. *Changes provided for in agreement.* A creditor may provide in the initial agreement that further advances will be prohibited or the credit line reduced during any period in which the maximum annual percentage rate is reached. A creditor also may provide for other specific changes to take place upon the occurrence of specific events. Both the triggering event and the resulting modification must be stated with specificity. For example, in home equity plans for employees, the agreement could provide that a specified higher rate or margin will apply if the borrower's employment with the creditor ends. A contract could contain a stepped-rate or stepped-fee schedule providing for specified changes in the rate or the fees on certain dates or after a specified period of time. A creditor also may provide in the initial agreement that it will be entitled to a share of the appreciation in the value of the property as long as the specific appreciation share and the specific circumstances which require the payment of it are set forth. A contract may permit a consumer to switch among minimum payment options during the plan.

2. *Prohibited provisions.* A creditor may not include a general provision in its agreement permitting changes to any or all of the terms of the plan. For example, creditors may not include ''boilerplate'' language in the agreement stating that they reserve the right to change the fees imposed under the plan. In addition, a creditor may not include any ''triggering events'' or responses that the regulation expressly addresses in a manner different from that provided in the regulation. For example, an agreement may not provide that the margin in a variable-rate plan will increase if there is a material change in the consumer's financial circumstances, because the regulation specifies that temporarily freezing the line or lowering the credit limit is the permissible response to a material change in the consumer's financial circumstances. Similarly a contract cannot contain a provision allowing the creditor to freeze a line due to an insignificant decline in property value since the regulation allows that response only for a significant decline.

*Paragraph 5b(f)(3)(ii)*

1. *Substitution of index.* A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

*Paragraph 5b(f)(3)(iii)*

1. *Changes by written agreement.* A creditor may change the terms of a plan if the consumer expressly agrees in writing to the change at the time it is made. For example, a consumer and a creditor could agree in writing to change the repayment terms from interest-only payments to payments that reduce the principal balance. The provisions of any such agreement are governed by the limitations in §226.5b(f). For example, a mutual agreement could not provide for future annual percentage rate changes based on the movement of an index controlled by the

creditor or for termination and acceleration under circumstances other than those specified in the regulation. By contrast, a consumer could agree to a new credit limit for the plan, although the agreement could not permit the creditor to later change the credit limit except by a subsequent written agreement or in the circumstances described in §226.5b(f)(3)(vi).

2. *Written agreement.* The change must be agreed to in writing by the consumer. Creditors are not permitted to assume consent because the consumer uses an account, even if use of an account would otherwise constitute acceptance of a proposed change under state law.

*Paragraph 5b(f)(3)(iv)*

1. *Beneficial changes.* After a plan is opened, a creditor may make changes that unequivocally benefit the consumer. Under this provision, a creditor may offer more options to consumers, as long as existing options remain. For example, a creditor may offer the consumer the option of making lower monthly payments or could increase the credit limit. Similarly, a creditor wishing to extend the length of the plan on the same terms may do so. Creditors are permitted to temporarily reduce the rate or fees charged during the plan (though a change in terms notice may be required under §226.9(c) when the rate or fees are returned to their original level). Creditors also may offer an additional means of access to the line, even if fees are associated with using the device, provided the consumer retains the ability to use prior access devices on the original terms.

*Paragraph 5b(f)(3)(v)*

1. *Insignificant changes.* A creditor is permitted to make insignificant changes after a plan is opened. This rule accommodates operational and similar problems, such as changing the address of the creditor for purposes of sending payments. It does not permit a creditor to change a term such as a fee charged for late payments.

2. *Examples of insignificant changes.* Creditors may make minor changes to features such as the billing cycle date, the payment due date (as long as the consumer does not have a diminished grace period if one is provided), and the day of the month on which index values are measured to determine changes to the rate for variable-rate plans. A creditor also may change its rounding practice in accordance with the tolerance rules set forth in §226.14 (for example, stating an exact APR of 14.3333 percent as 14.3 percent, even if it had previously been stated as 14.33 percent). A creditor may change the balance computation method it uses only if the change produces an insignificant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the average daily balance method (including new transactions) to the daily balance method (including new transactions).

*Paragraph 5b(f)(3)(vi)*

1. *Suspension of credit privileges or reduction of credit limit.* A creditor may prohibit additional extensions of credit or reduce the credit limit in the circumstances specified in this section of the regulation. In addition, as discussed under §226.5b(f)(3)(i), a creditor may contractually reserve the right to take such actions when the maximum annual percentage rate is reached. A creditor may not take these actions under other circumstances, unless the creditor would be permitted to terminate the line and accelerate the balance as described in §226.5b(f)(2). The creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment.

2. *Temporary nature of suspension or reduction.* Creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only while one of the designated circumstances exists. When the circumstance justifying the creditor's action ceases to exist, credit privileges must be reinstated, assuming that no other circumstance permitting such action exists at that time.

3. *Imposition of fees.* If not prohibited by state law, a creditor may collect only bona fide and reasonable appraisal and credit report fees if such fees are actually incurred in investigating whether the condition permitting the freeze continues to exist. A creditor may not, in any circumstances, impose a fee to reinstate a credit line once the condition has been determined not to exist.

4. *Reinstatement of credit privileges.* Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist. One way a creditor can meet this responsibility is to monitor the line on an ongoing basis to determine when the condition ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze continues to exist. The frequency with which the creditor must investigate to determine whether a condition continues to exist depends upon the specific condition permitting the freeze. As an alternative to such monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges by providing a notice in accordance with §226.9(c)(3). A creditor may require a reinstatement request to be in writing if it notifies the consumer of this requirement on the notice provided under §226.9(c)(3). Once the consumer requests reinstatement, the creditor must promptly investigate to determine

whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.

5. *Suspension of credit privileges following request by consumer.* A creditor may honor a specific request by a consumer to suspend credit privileges. If the consumer later requests that the creditor reinstate credit privileges, the creditor must do so provided no other circumstance justifying a suspension exists at that time. If two or more consumers are obligated under a plan and each has the ability to take advances, the agreement may permit any of the consumers to direct the creditor not to make further advances. A creditor may require that all persons obligated under a plan request reinstatement.

6. *Significant decline defined.* What constitutes a significant decline for purposes of §226.5b(f)(3)(vi)(A) will vary according to individual circumstances. In any event, if the value of the dwelling declines such that the initial difference between the credit limit and the available equity (based on the property's appraised value for purposes of the plan) is reduced by fifty percent, this constitutes a significant decline in the value of the dwelling for purposes of §226.5b(f)(3)(vi)(A). For example, assume that a house with a first mortgage of $50,000 is appraised at $100,000 and the credit limit is $30,000. The difference between the credit limit and the available equity is $20,000, half of which is $10,000. The creditor could prohibit further advances or reduce the credit limit if the value of the property declines from $100,000 to $90,000. This provision does not require a creditor to obtain an appraisal before suspending credit privileges although a significant decline must occur before suspension can occur.

7. *Material change in financial circumstances.* Two conditions must be met for §226.5b(f)(3)(vi)(B) to apply. First, there must be a ''material change'' in the consumer's financial circumstances, such as a significant decrease in the consumer's income. Second, as a result of this change, the creditor must have a reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. A creditor may, but does not have to, rely on specific evidence (such as the failure to pay other debts) in concluding that the second part of the test has been met. A creditor may prohibit further advances or reduce the credit limit under this section if a consumer files for or is placed in bankruptcy.

8. *Default of a material obligation.* Creditors may specify events that would qualify as a default of a material obligation under §226.5b(f)(3)(vi)(C). For example, a creditor may provide that default of a material obligation will exist if the consumer moves out of the dwelling or permits an intervening lien to be filed that would take priority over future advances made by the creditor.

9. *Government limits on the annual percentage rate.* Under §226.5b(f)(3)(vi)(D), a creditor may prohibit further advances or reduce the credit limit if, for example, a state usury law is enacted which prohibits a creditor from imposing the agreed-upon annual percentage rate.

### *5b(g) Refund of Fees*

1. *Refund of fees required.* If any disclosed term, including any term provided upon request pursuant to §226.5b(d), changes between the time the early disclosures are provided to the consumer and the time the plan is opened, and the consumer as a result decides to not enter into the plan, a creditor must refund all fees paid by the consumer in connection with the application. All fees, including credit report fees and appraisal fees, must be refunded whether such fees are paid to the creditor or directly to third parties. A consumer is entitled to a refund of fees under these circumstances whether or not terms are guaranteed by the creditor under §226.5b(d)(2)(i).

2. *Variable-rate plans.* The right to a refund of fees does not apply to changes in the annual percentage rate resulting from fluctuations in the index value in a variable-rate plan. Also, if the maximum annual percentage rate is expressed as an amount over the initial rate, the right to refund of fees would not apply to changes in the cap resulting from fluctuations in the index value.

3. *Changes in terms.* If a term, such as the maximum rate, is stated as a range in the early disclosures, and the term ultimately applicable to the plan falls within that range, a change does not occur for purposes of this section. If, however, no range is used and the term is changed (for example, a rate cap of 6 rather than 5 percentage points over the initial rate), the change would permit the consumer to obtain a refund of fees. If a fee imposed by the creditor is stated in the early disclosures as an estimate and the fee changes, the consumer could elect to not enter into the agreement and would be entitled to a refund of fees. On the other hand, if fees imposed by third parties are disclosed as estimates and those fees change, the consumer is not entitled to a refund of fees paid in connection with the application. Creditors must, however, use the best information reasonably available in providing disclosures about such fees.

4. *Timing of refunds and relation to other provisions.* The refund of fees must be made as soon as reasonably possible after the creditor is notified that the consumer is not entering into the plan because of the changed term, or that the consumer wants a refund of fees.

The fact that an application fee may be refunded to some applicants under this provision does not render such fees finance charges under § 226.4(c)(1) of the regulation.

*5b(h) Imposition of Nonrefundable Fees*

1. *Collection of fees after consumer receives disclosures.* A fee may be collected after the consumer receives the disclosures and brochure and before the expiration of three days, although the fee must be refunded if, within three days of receiving the required information, the consumer decides to not enter into the agreement. In such a case, the consumer must be notified that the fee is refundable for three days. The notice must be clear and conspicuous and in writing, and may be included with the disclosures required under § 226.5b(d) or as an attachment to them. If disclosures and brochure are mailed to the consumer, footnote 10d of the regulation provides that a nonrefundable fee may not be imposed until six business days after the mailing.

2. *Collection of fees before consumer receives disclosures.* An application fee may be collected before the consumer receives the disclosures and brochure (for example, when an application contained in a magazine is mailed in with an application fee) provided that it remains refundable until three business days after the consumer receives the § 226.5b disclosures. No other fees except a refundable membership fee may be collected until after the consumer receives the disclosures required under § 226.5b.

3. *Relation to other provisions.* A fee collected before disclosures are provided may become nonrefundable except that, under § 226.5b(g), it must be refunded if the consumer elects to not enter into the plan because of a change in terms. (Of course, all fees must be refunded if the consumer later rescinds under § 226.15.)

*Section 226.6 Initial Disclosure Statement*

1. *Consistent terminology.* Language on the initial and periodic disclosure statements must be close enough in meaning to enable the consumer to relate the 2 sets of disclosures; however, the language need not be identical. For example, in making the disclosure under § 226.6(a)(3), the creditor may refer to the ''outstanding balance at the end of the billing cycle,'' while the disclosure for § 226.7(i) refers to the ''ending balance'' or ''new balance.''

2. *Separate initial disclosures permitted.* In a certain open-end credit program involving more than one creditor—a card issuer of travel-and-entertainment cards and a financial institution—the consumer has the option to pay the card issuer directly or to transfer to the financial institution all or part of the amount owing. In this case, the creditors may send separate initial disclosure statements.

*6(a) Finance charge.*

*Paragraph 6(a)(1)*

1. *When finance charges accrue.* Creditors may provide a general explanation about finance charges beginning to run and need not disclose a specific date. For example, a disclosure that the consumer has 30 days from the closing date to pay the new balance before finance charges will accrue on the account would describe when finance charges begin to run.

2. *Free-ride periods.* In disclosing whether or not a free-ride period exists, the creditor need not use ''free period,'' ''free-ride period,'' or any other particular descriptive phrase or term. For example, a statement that ''the finance charge begins on the date the transaction is posted to your account'' adequately discloses that no free-ride period exists. In the same fashion, a statement that ''finance charges will be imposed on any new purchases only if they are not paid in full within 25 days after the close of the billing cycle'' indicates that a free-ride period exists in the interim.

*Paragraph 6(a)(2).*

1. *Range of balances.* The range of balances disclosure is inapplicable:

• If only one periodic rate may be applied to the entire account balance.

• If only one periodic rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to 2 rates (a 1.5% periodic rate on purchase balances of $0–$500, while balances above $500 are subject to a 1% periodic rate). Of course, the creditor must give a range of balances disclosure for the purchase feature.

2. *Variable-rate disclosures—coverage.* This section covers open-end credit plans under which rate changes are part of the plan and are tied to an index or formula. A creditor would use variable-rate disclosures (and thus be excused from the requirement of giving a change-in-terms notice when rate increases occur as disclosed) for plans involving rate changes such as the following:

• Rate changes that are tied to the rate the creditor pays on its 6-month money market certificates.

• Rate changes that are tied to Treasury bill rates.

• Rate changes that are tied to changes in the creditor's commercial lending rate.

In contrast, the creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates) would not be considered a variable-rate plan for Truth in Lending disclosure purposes. (See the rule in § 226.5b(f)(1) applicable to home equity plans, however, which prohibits ''rate reservation'' clauses.) Moreover, an open-end credit plan in which the employee receives a lower rate contingent upon employment (that is, with the rate to be increased upon termination of employment) is not a variable-rate plan. (With regard to such employee preferential-rate plans, however, see comment 9(c)–1, which provides that if the specific change that would occur is disclosed on the initial disclosure statement, no notice of a change in terms need be given when the term later changes as disclosed.)

3. *Variable rate plan—rate(s) in effect.* In disclosing the rate(s) in effect at the time of the initial disclosures (as is required by §226.6(a)(2)), the creditor may use an insert showing the current rate; may give the rate as of a specified date and then update the disclosure from time to time, for example, each calendar month; or may disclose an estimated rate under §226.5(c).

4. *Variable rate plan—additional disclosures required.* In addition to disclosing the rates in effect at the time of the initial disclosures, the disclosures under footnote 12 also must be made.

5. *Variable rate plan—index.* The index to be used must be clearly identified; the creditor need not give, however, an explanation of how the index is determined or provide instructions for obtaining it.

6. *Variable rate plan—circumstances for increase.* Circumstances under which the rate(s) may increase include, for example:

• An increase in the Treasury bill rate.

• An increase in the Federal Reserve discount rate.

The creditor must disclose when the increase will take effect; for example,

• ''An increase will take effect on the day that the Treasury bill rate increases,'' or

• ''An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle.''

7. *Variable-rate plan—limitations on increase.* In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. (A maximum interest rate must be included in dwelling-secured open-end credit plans under which the interest rate may be changed. See §226.30 and the commentary to that section.) Legal limits such as usury or rate ceilings under State or Federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

• ''The rate on the plan will not exceed 25% annual percentage rate.''

• ''Not more than ½% increase in the annual percentage rate per year will occur.''

8. *Variable rate plan—effects of increase.* Examples of effects that must be disclosed include:

• Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

• Any increase in the scheduled minimum periodic payment amount.

9. *Variable rate plan—change-in-terms notice not required.* No notice of a change in terms is required for a rate increase under a variable rate plan as defined in Comment 6(a)(2)–2.

10. *Discounted variable-rate plans.* In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

• For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forego the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

• When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the initial disclosure statement should reflect: (1) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long it will remain in effect; (2) the current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and (3) the other variable-rate information required by footnote 12 to §226.6(a)(2).

• In disclosing the current periodic and annual percentage rates that would be applied using the index or formula, the creditor may use any of the disclosure options described in comment 6(a)(2)–3.

11. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must disclose the index and the margin. The creditor must also disclose the specific event or events that may result in the increased rate, such as ''22% APR, if 60 days late.'' If the penalty rate cannot be determined at the time disclosures are given, the creditor must provide an explanation of the specific event or events that may result in the increased rate. At the creditor's option, the creditor may disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The creditor need not disclose an

increased rate that is imposed when credit privileges are permanently terminated.

*Paragraph 6(a)(3).*

1. *Explanation of balance computation method.* A shorthand phrase such as ''previous balance method'' does not suffice in explaining the balance computation method. (See appendix G–1 for model clauses.)

2. *Allocation of payments.* Disclosure about the allocation of payments and other credits is not required. For example, the creditor need not disclose that payments are applied to late charges, overdue balances, and finance charges before being applied to the principal balance; or in a multifeatured plan, that payments are applied first to finance charges, then to purchases, and then to cash advances. (See Comment 7–1 for definition of multifeatured plan.)

*Paragraph 6(a)(4).*

1. *Finance charges.* In addition to disclosing the periodic rate(s) under §226.6(a)(2), disclosure is required of any other type of finance charge that may be imposed, such as minimum, fixed, transaction, and activity charges; required insurance; or appraisal or credit report fees (unless excluded from the finance charge under §226.4(c)(7)).

*6(b) Other charges.*

1. *General; examples of other charges.* Under §226.6(b), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

i. Late payment and over-the-credit-limit charges.

ii. Fees for providing documentary evidence of transactions requested under §226.13 (billing error resolution).

iii. Charges imposed in connection with real estate transactions such as title, appraisal, and credit report fees (see §226.4(c)(7)).

iv. A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances (see the commentary to §226.4(a)).

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an ''other charge,'' even if membership is required to apply for credit. For the fee to be excluded from disclosure as an ''other charge,'' however, the package of services must have some substantive purpose other than access to the credit feature. For example, if the primary benefit of membership in an organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature, the membership fee would have to be disclosed as an ''other charge.''

vi. Automated teller machine (ATM) charges described in comment 4(a)–4 that are not finance charges.

vii. Charges imposed for the termination of an open-end credit plan.

2. *Exclusions.* The following are examples of charges that are not ''other charges'':

i. Fees charged for documentary evidence of transactions for income tax purposes.

ii. Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.

iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.

iv. Application fees under §226.4(c)(1).

v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

vi. Charges for submitting as payment a check that is later returned unpaid (*see* commentary to §226.4(c)(2)).

vii. Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (*See* also comment 7(b)–2.)

viii. Taxes and filing or notary fees excluded from the finance charge under §226.4(e).

ix. A fee to expedite delivery of a credit card, either at account opening or during the life of the account, provided delivery of the card is also available by standard mail service (or other means at least as fast) without paying a fee for delivery.

x. A fee charged for arranging a single payment on the credit account, upon the consumer's request (regardless of how frequently the consumer requests the service), if the credit plan provides that the consumer may make payments on the account by another reasonable means, such as by standard mail service, without paying a fee to the creditor.

*6(c) Security interests.*

1. *General.* Disclosure is not required about the type of security interest, or about the creditor's rights with respect to that collateral. In other words, the creditor need not expand on the term *security interest.* Also, since no specified terminology is required, the creditor may designate its interest by using, for example, *pledge, lien,* or *mortgage* (instead of *security interest*).

2. *Identification of property.* Identification of the collateral by type is satisfied by stating, for example, *motor vehicle* or *household appliances.* (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more

specific identification (for example, a model and serial number).

3. *Spreader clause.* The fact that collateral for pre-existing credit extensions with the institution is being used to secure the present obligation constitutes a security interest and must be disclosed. (Such security interests may be known as *spreader* or *dragnet* clauses, or as *cross-collateralization* clauses.) A specific identification of that collateral is unnecessary, but a reminder of the interest arising from the prior indebtedness is required. This may be accomplished by using language such as ''collateral securing other loans with us may also secure this loan.'' At the creditor's option, a more specific description of the property involved may be given.

4. *Additional collateral.* If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the initial disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under §226.9(c) at the time the security is taken. (See comment 6(c)–2.)

5. *Collateral from third party.* In certain situations, the consumer's obligation may be secured by collateral belonging to a third party. For example, an open-end credit plan may be secured by an interest in property owned by the consumer's parents. In such cases, the security interest is taken in connection with the plan and must be disclosed, even though the property encumbered is owned by someone other than the consumer.

*6(d) Statement of billing rights.*

See the commentary to appendix G–3.

*6(e) Home Equity Plan Information*

1. *Additional disclosures required.* For home equity plans, creditors must provide several of the disclosures set forth in §226.5b(d) along with the disclosures required under §226.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. (See comment 5b(d)(4)(iii)–1.)

2. *Form of disclosures.* The home equity disclosures provided under this section must be in a form the consumer can keep, and are governed by §226.5(a)(1). The segregation standard set forth in §226.5b(a) does not apply to home equity disclosures provided under §226.6.

3. *Disclosure of payment and variable-rate examples.* The payment example disclosure in §226.5b(d)(5)(iii) and the variable-rate information in §226.5b(d)(12) (viii), (x), (xi), and (xii) need not be provided with the disclosures under §226.6 if:

- The disclosures under §226.5b(d) were provided in a form the consumer could keep; and
- The disclosures of the payment example under §226.5b(d)(5)(iii), the maximum payment example under §226.5b(d)(12)(x) and the historical table under §226.5b(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen.

For example, if a creditor offers three payment options (one for each of the categories described in the commentary to §226.5b(d)(5)), describes all three options in its early disclosures, and provides all of the disclosures in a retainable form, that creditor need not provide the §226.5b(d)(5)(iii) or (d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures (which would be the case with a separate disclosure form rather than a combined form, as discussed under §226.5b(a)), the disclosures under §226.5b(d)(5)(iii) and (d)(12) (viii), (x), (xi) and (xii) must be given to any consumer who chooses one of the other two options. If the §226.5b(d)(5)(iii) and (d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

4. *Disclosures for the repayment period.* The creditor must provide disclosures about both the draw and repayment phases when giving the disclosures under §226.6. Specifically, the creditor must make the disclosures in §226.6(e), state the corresponding annual percentage rate (as required in §226.6(a)(2)) and provide the variable-rate information required in footnote 12 for the repayment phase. To the extent the corresponding annual percentage rate, the information in footnote 12, and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.

References

*Statute:* Section 127(a).

*Other sections:* Sections 226.4, 226.5, 226.7, 226.9, 226.14, and appendix G.

*Previous regulation:* Section 226.7(a) and Interpretation §226.706.

*1981 changes:* Section 226.6 implements the amended statute which requires disclosure of the fact that *no* free period exists. Disclosures about the minimum periodic payment and the Comparative Index of Credit Cost have been eliminated. The security interest disclosures have been simplified. *Other charges* no longer include voluntary credit life or disability insurance, required property insurance premiums, default charges, or fees for collection activity. Disclosures for variable rate plans are now required by the regulation, replacing Interpretation §226.707. The regulation no longer specifies the exact language to be used for the billing rights notice; creditors may use any version *substantially similar* to the one in appendix G.

*Section 226.7—Periodic Statement*

1. *Multifeatured plans.* Some plans involve a number of different features, such as purchases, cash advances, or overdraft checking. Groups of transactions subject to different finance charge terms because of the dates on which the transactions took place are treated like different features for purposes of disclosures on the periodic statements. The commentary includes some special rules for multifeatured plans.

2. *Separate periodic statements permitted.* In a certain open-end credit program involving more than one creditor—a card issuer of travel-and-entertainment cards and a financial institution—the consumer has the option to pay the card issuer directly or to transfer to the financial institution all or part of the amount owing. In this case, the creditors may send separate periodic statements that reflect the separate obligations owed to each.

3. *Deferred payment transactions.* Creditors offer a variety of payment plans for purchases that permit consumers to avoid finance charges if the purchase balance is paid in full by a certain date. The following provides guidance for one type of deferred payment plan where, for example, no finance charge is imposed on a $500 purchase made in January if the $500 balance is paid by March 31.

i. *Periodic rates.* Under §226.7(d), creditors must disclose each periodic rate that may be used to compute the finance charge. Under some plans with a deferred payment feature, if the deferred payment balance is not paid by the payment due date, finance charges attributable to periodic rates applicable to the billing cycles between the date of purchase and the payment due date (January through March in this example) may be imposed. Periodic rates that may apply to the deferred payment balance ($500 in this example) if the balance is not paid in full by the payment due date must appear on periodic statements for the billing cycles between the date of purchase and the payment due date. However, if the consumer does not pay the deferred payment balance by the due date, the creditor is not required to identify, on the periodic statement disclosing the finance charge for the deferred payment balance, periodic rates that have been disclosed in previous billing cycles between the date of purchase and the payment due date.

ii. *Balances subject to periodic rates.* Under §226.7(e), creditors must disclose the balances subject to periodic rates during a billing cycle. The deferred payment balance ($500 in this example) is not subject to a periodic rate for billing cycles between the date of purchase and the payment due date. Periodic statements sent for those billing cycles should not include the deferred payment balance in the balance disclosed under §226.7(e). At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than the term used to identify the balance disclosed under §226.7(e) (such as "deferred payment balance"). During any billing cycle in which a periodic rate finance charge on the deferred payment balance is debited to the account, the balance disclosed under §226.7(e) should include the deferred payment balance for that billing cycle.

iii. *Amount of finance charge.* Under §226.7(f), creditors must disclose finance charges imposed during a billing cycle. For some deferred payment purchases, the creditor may impose a finance charge from the date of purchase if the deferred payment balance ($500 in this example) is not paid in full by the due date, but otherwise will not impose finance charges for billing cycles between the date of purchase and the payment due date. Periodic statements for billing cycles preceding the payment due date should not include in the finance charge disclosed under §226.7(f) the amounts a consumer may owe if the deferred payment balance is not paid in full by the payment due date. In this example, the February periodic statement should not identify as finance charges interest attributable to the $500 January purchase. At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than "finance charge" (such as "contingent finance charge" or "deferred finance charge"). The finance charge on a deferred payment balance should be reflected on the periodic statement under §226.7(f) for the billing cycle in which the finance charge is debited to the account.

iv. *Free-ride period.* Assuming monthly billing cycles ending at month-end and a free-ride period ending on the 25th of the following month, here are four examples illustrating how a creditor may comply with the requirement to disclose the free-ride period applicable to a deferred payment balance ($500 in this example) and with the 14-day rule for mailing or delivering periodic statements before imposing finance charges (see §226.5):

A. The creditor could include the $500 purchase on the periodic statement reflecting account activity for February and sent on

March 1 and identify March 31 as the payment due date for the $500 purchase. (The creditor could also identify March 31 as the payment due date for any other amounts that would normally be due on March 25.)

B. The creditor could include the $500 purchase on the periodic statement reflecting activity for March and sent on April 1 and identify April 25 as the payment due date for the $500 purchase, permitting the consumer to avoid finance charges if the $500 is paid in full by April 25.

C. The creditor could include the $500 purchase and its due date on each periodic statement sent during the deferred payment period (January, February, and March in this example).

D. If the due date for the deferred payment balance is March 7 (instead of March 31), the creditor could include the $500 purchase and its due date on the periodic statement reflecting activity for January and sent on February 1, the most recent statement sent at least 14 days prior to the due date.

*7(a) Previous balance.*

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans.* In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

*7(b) Identification of transactions.*

1. *Multifeatured plans.* In identifying transactions under §226.7(b) for multifeatured plans, creditors may, for example, choose to arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions) or in some other clear manner, such as by arranging the transactions in general chronological order.

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

*7(c) Credits.*

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—*credit* would suffice—except if the creditor is using the periodic statement to satisfy the billing error correction notice requirement. (See the commentary to §226.13 (e) and (f).)

2. *Format.* A creditor may list credits relating to credit extensions (payments, rebates, etc.) together with other types of credits (such as deposits to a checking account), as long as the entries are identified so as to inform the consumer which type of credit each entry represents.

3. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

4. *Totals.* Where the creditor lists the credits made to the account during the billing cycle, the creditor need not disclose total figures for the amounts credited.

*7(d) Periodic rates.*

1. *Disclosure of periodic rates—whether or not actually applied.* Any periodic rate that may be used to compute finance charges (and its corresponding annual percentage rate) must be disclosed whether or not it is applied during the billing cycle. For example:

- If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the rate for each, even if the consumer only makes purchases on the account during the billing cycle.
- If the rate varies (such as when it is tied to a particular index), the creditor must disclose each rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic rates required only if imposition possible.* With regard to the periodic rate disclosure (and its corresponding annual percentage rate), only rates that *could have* been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

- If the creditor is changing rates effective during the next billing cycle (either because it is changing terms or because of a variable rate plan), the rates required to be disclosed under §226.7(d) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the monthly rate applied during May was 1.5 percent, but the creditor will increase the rate to 1.8 percent effective June 1, 1.5 percent (and its corresponding annual percentage rate) is the only required disclosure under §226.7(d) for the periodic statement reflecting the May account activity.

• If the consumer has an overdraft line that might later be expanded upon the consumer's request to include secured advances, the rates for the secured advance feature need not be given until such time as the consumer has requested and received access to the additional feature.

• If rates applicable to a particular type of transaction changed after a certain date, and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the *same* balance for the same type of transaction (for example, if the finance charge consists of a monthly periodic rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at .1% per month on the same outstanding balance), the creditor may do either of the following:

• Disclose each periodic rate, the range of balances to which it is applicable, and the corresponding annual percentage rate for each. (For example, 1.5% monthly, 18% annual percentage rate; .1% monthly, 1.2% annual percentage rate.)

• Disclose one composite periodic rate (that is, 1.6% per month) along with the applicable range of balances and corresponding annual percentage rate.

4. *Corresponding annual percentage rate.* In disclosing the annual percentage rate that corresponds to each periodic rate, the creditor may use ''corresponding annual percentage rate,'' ''nominal annual percentage rate,'' ''corresponding nominal annual percentage rate,'' or similar phrases.

5. *Rate same as actual annual percentage rate.* When the corresponding rate is the same as the actual annual percentage rate (historical rate) required to be disclosed (§226.7(g)), the creditor need disclose only one annual percentage rate, but must use the phrase ''annual percentage rate.''

6. *Ranges of balances.* See Comment 6(a)(2)–1.

7. *Deferred payment transactions.* See comment 7–3(i).

*7(e) Balance on which finance charge computed.*

1. *Limitation to periodic rates.* Section 226.7(e) only requires disclosure of the balance(s) to which a periodic rate was applied and does not apply to balances on which other kinds of finance charges (such as transaction charges) were imposed. For example, if a consumer obtains a $1,500 cash advance subject to both a 1% transaction fee and a 1% monthly periodic rate, the creditor need only disclose the balance subject to the monthly rate (which might include portions of earlier cash advances not paid off in previous cycles).

2. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5 percent applied to the first $500, and a monthly periodic rate of 1 percent to the remainder. This option to disclose a combined balance does not apply when the finance charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(e)–5.)

3. *Monthly rate on average daily balance.* If a creditor computes a finance charge on the average daily balance by application of a monthly periodic rate or rates, the balance is adequately disclosed if the statement gives the amount of the average daily balance on which the finance charge was computed, and also states how the balance is determined.

4. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature or group of features subject to different periodic rates or different balance computation methods. Separate balances are not required, however, merely because a ''free-ride'' period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comment 7(e)–5.)

5. *Daily rate on daily balance.* If the finance charge is computed on the balance each day by application of one or more daily periodic rates, the balance on which the finance charge was computed may be disclosed in any of the following ways for each feature:

• If a single daily periodic rate is imposed, the balance to which it is applicable may be stated as:

—A balance for each day in the billing cycle

—A balance for each day in the billing cycle on which the balance in the account changes

—The sum of the daily balances during the billing cycle

—The average daily balance during the billing cycle, in which case the creditor shall explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of the finance charge.

• If two or more daily periodic rates may be imposed, the balances to which the rates are applicable may be stated as:

—A balance for each day in the billing cycle

—A balance for each day in the billing cycle on which the balance in the account changes

—Two or more average daily balances, each applicable to the daily periodic rates imposed for the time that those rates were in effect, as long as the creditor explains that the finance charge is or may be determined by (1) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (2) multiplying each of the results by the applicable daily periodic rate, and (3) adding these products together.

6. *Explanation of balance computation method.* See the commentary to §226.6(a)(3).

7. *Information to compute balance.* In connection with disclosing the finance charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

8. *Non-deduction of credits.* The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§226.7(c)) and indicating which credits will not be deducted in determining the balance (for example, ''credits after the 15th of the month are not deducted in computing the finance charge.'')

9. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed even though the same computation method is used for determining the balance for each feature. In these cases, one explanation of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(e)–2. In these cases, one explanation of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

10. *Deferred payment transactions.* See comment 7–3(ii).

*7(f) Amount of finance charge.*

1. *Total.* A total finance charge amount for the plan is not required.

2. *Itemization—types of finance charges.* Each type of finance charge (such as periodic rates, transaction charges, and minimum charges) imposed during the cycle must be separately itemized; for example, disclosure of only a combined finance charge attributable to both a minimum charge and transaction charges would not be permissible. Finance charges of the same type may be disclosed, however, individually or as a total. For example, 5 transaction charges of $1 may be listed separately or as $5.

3. *Itemization—different periodic rates.* Whether different periodic rates are applicable to different types of transactions or to different balance ranges, the creditor may give the finance charge attributable to each rate or may give a total finance charge amount. For example, if a creditor charges 1.5% per month on the first $500 of a balance and 1% per month on amounts over $500, the creditor may itemize the two components ($7.50 and $1.00) of the $8.50 charge, or may disclose $8.50.

4. *Multifeatured plans.* In a multifeatured plan, in disclosing the amount of the finance charge attributable to the application of periodic rates no total periodic rate disclosure for the entire plan need be given.

5. *Finance charges not added to account.* A finance charge that is not included in the new balance because it is payable to a third party (such as required life insurance) must still be shown on the periodic statement as a finance charge.

6. *Finance charges other than periodic rates.* See Comment 6(a)(4)–1 for examples.

7. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, no disclosure is required of finance charges that have accrued since the last payment.

8. *Start-up fees.* Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. If, however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance

charge on the first periodic statement. However, they need not be factored into the annual percentage rate. (See footnote 33 in the regulation.)

9. *Deferred payment transactions.* See comment 7–3(iii).

*7(g) Annual percentage rate.*

1. *Rate same as corresponding annual percentage rate.* See Comment 7(d)–5.

2. *Multifeatured plans.* In a multifeatured plan, the actual annual percentage rate that reflects the finance charge imposed during the cycle may be separately stated for each feature, or may be described as a composite for the whole plan. If separate rates are given, a composite annual percentage rate for the entire plan is optional.

*7(h) Other charges.*

1. *Identification.* In identifying any ''other charges'' actually imposed during the billing cycle, the type is adequately described as *late charge* or *membership fee,* for example. Similarly, *closing costs* or *settlement costs,* for example, may be used to describe charges imposed in connection with real estate transactions that are excluded from the finance charge under §226.4(c)(7), if the same term (such as *closing costs*) was used in the initial disclosures and if the creditor chose to itemize and individually disclose the costs included in that term. Even though the taxes and filing or notary fees excluded from the finance charge under §226.4(e) are not required to be disclosed as *other charges* under §226.6(b), these charges may be included in the amount shown as *closing costs* or *settlement costs* on the periodic statement, if the charges were itemized and disclosed as part of the *closing costs* or *settlement costs* on the initial disclosure statement. (See comment 6(b)–1 for examples of *other charges.*)

2. *Date.* The date of imposing or debiting *other charges* need not be disclosed.

3. *Total.* Disclosure of the total amount of other charges is optional.

4. *Itemization—types of other charges.* Each type of *other charge* (such as late payment charges, over-the-credit-limit charges, ATM fees that are not finance charges, and membership fees) imposed during the cycle must be separately itemized; for example, disclosure of only a total of *other charges* attributable to both an over-the-credit-limit charge and a late payment charge would not be permissible. *Other charges* of the same type may be disclosed, however, individually or as a total. For example, three ATM fees of $1 may be listed separately or as $3.

*7(i) Closing date of billing cycle; new balance.*

1. *Credit balances.* See Comment 7(a)–1.

2. *Multifeatured plans.* In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.

*7(j) Free-ride period.*

1. *Wording.* Although the creditor is required to indicate any time period the consumer may have to pay the balance outstanding without incurring additional finance charges, no specific wording is required, so long as the language used is consistent with that used on the initial disclosure statement. For example, ''To avoid additional finance charges, pay the new balance before _____'' would suffice.

2. *Deferred payment transactions.* See comment 7–3(iv).

*7(k) Address for notice of billing errors.*

1. *Wording.* The periodic statement must contain the address for consumers to use in asserting billing errors under §226.13. Since all disclosures must be ''clear,'' the statement should indicate the general purpose for the address, although no elaborate explanation or particular wording is required.

2. *Telephone number.* A telephone number may be included, but the address for billing error inquiries, which is the required disclosure, must be clear and conspicuous. One way to ensure that the address is clear and conspicuous is to include a precautionary instruction that telephoning will not preserve the consumer's billing error rights. Both of the billing rights statements in appendix G contain such a precautionary instruction, so that a creditor could, by including either of these statements with each periodic statement, ensure that the required address is provided in a clear and conspicuous manner.

References

*Statute:* Section 127(b).

*Previous regulation:* Section 226.7(b)(1) and Interpretation §§226.701, 226.703, 226.706, and 226.707.

*Other sections:* Sections 226.4 through 226.6, 226.8, 226.14, and appendix G.

*1981 changes:* Under §226.7, required terminology is no longer mandated except for the terms *finance charge* and *annual percentage rate.* The requirement in the previous regulation about the location of disclosures has been deleted.

Under the revised §226.7, disclosure of credits to the account no longer have to indicate the type of credit. A short disclosure for variable rate plans must be included on the periodic statement. Disclosures relating to multifeatured accounts have been clarified.

Section 226.7 now specifically requires a periodic statement disclosure of *other charges* (non-finance charges related to the plan) that are actually imposed during the billing cycle.

Disclosures about minimum charges that might be imposed on the account and about the Comparative Index of Credit Cost have been deleted.

*Section 226.8—Identification of Transactions*

1. *Application of identification rules.* Section 226.8 deals with the requirement (imposed by §226.7(b)) for identification of each credit transaction made during the billing cycle. The rules for identifying transactions on periodic statements vary, depending on whether:

• The transaction involves sale credit (purchases) or nonsale credit (cash advances, for example).

• An actual copy of the credit document reflecting the transaction accompanies the statement (this is the distinction between so-called *country club* and *descriptive* billing).

• The creditor and seller are the same or related persons.

2. *Sale credit.* The term *sale credit* refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit (see Comment 8–3 if access is by means of a check) to obtain goods or services from a merchant, whether or not the merchant is the card issuer. *Sale credit* even includes:

• Premiums for voluntary credit life insurance whether sold by the card issuer or another person.

• The purchase of funds-transfer services (such as telegrams) from an intermediary.

3. *Nonsale credit.* The term *nonsale credit* refers to any form of loan credit including, for example:

• Cash advances.

• Overdraft checking.

• The use of a *supplemental credit device* in the form of a check or draft or the use of the overdraft feature of a debit card, even if such use is in connection with a purchase of goods or services.

• Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

4. *Actual copy.* An actual copy does not include a recreated document. It includes, for example, a duplicate, carbon, or photographic copy, but does not include a so-called ''facsimile draft'' in which the required information is typed, printed, or otherwise recreated. If a facsimile draft is used, the creditor must follow the rules that apply when a copy of the credit document is not furnished.

5. *Same or related persons.* For purposes of identifying transactions, the term *same or related persons* refers to, for example:

• Franchised or licensed sellers of a creditor's product or service.

• Sellers who assign or sell open-end sales accounts to a creditor or arrange for such credit under a plan that allows the consumer to use the credit only in transactions with that seller.

A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

6. *Transactions resulting from promotional material.* In describing transactions with third-party sellers resulting from promotional material mailed by the creditor, creditors may use the rules either for *related* or for *non-related* sellers and creditors.

7. *Credit insurance offered through the creditor.* When credit insurance that is not part of the finance charge (for example, voluntary credit life insurance) is offered to the consumer through the creditor, but is actually provided by another company, the creditor has the option of identifying the premiums in one of two ways on the periodic statement. The creditor may describe the premiums using either the rule in §226.8(a)(2) for *related* sellers and creditors, or the rule in §226.8(a)(3) for *non-related* sellers and creditors. This means, therefore, that the creditor may identify the insurance either by providing, under §226.8(a)(2), a brief identification of the services provided (for example, *credit life insurance*), or by disclosing, under §226.8(a)(3), the name and address of the company providing the insurance (for example, ABC Insurance Company, New York, New York). In either event, the creditor would, of course, also provide the amount and the date of the transaction.

8. *Transactions involving creditors and sellers with corporate connections.* In a credit card plan established for use primarily with sellers that have no corporate connection with the creditor, the creditor may describe all transactions under the plan by using the rules in §226.8(a)(3)—creditor and seller not same or related persons—including transactions involving a seller that has a corporate connection with the creditor. In other credit card plans, the creditor may describe transactions involving a seller that has a corporate connection with the creditor, such as subsidiary-parent, using the rules in §226.8(a)(3) where it is unlikely that the consumer would know of the corporate connection between the creditor and the seller—for example, where the names of the creditor and the seller are not similar, and the periodic statement is issued in the name of the creditor only.

*8(a) Sale credit.*

1. *Date—disclosure of only one date.* If only the required date is disclosed for a transaction, the creditor need not identify it as the ''transaction date.'' If the creditor discloses more than one date (for example, the

transaction date and the posting date), the creditor must identify each.

2. *Date—disclosure of month and day only.* The month and day are sufficient disclosure of the date on which the transaction took place, unless the posting of the transaction is delayed so long that the year is needed for a clear disclosure to the consumer.

3. *When transaction takes place.* If the consumer conducts the transaction in person, the date of the transaction is the calendar date on which the consumer made the purchase or order, or secured the advance. For transactions billed to the account on an ongoing basis (other than installments to pay a precomputed amount), the date of the transaction is the date on which the amount is debited to the account. This might include, for example, monthly insurance premiums. For mail or telephone orders, a creditor may disclose as the transaction date either the invoice date, the debiting date, or the date the order was placed by telephone.

4. *Transactions not billed in full.* If sale transactions are not billed in full on any single statement, but are billed periodically in precomputed installments, the first periodic statement reflecting the transaction must show either the full amount of the transaction together with the date the transaction actually took place; *or* the amount of the first installment that was debited to the account together with the date of the transaction or the date on which the first installment was debited to the account. In any event, subsequent periodic statements should reflect each installment due, together with either any other identifying information required by §226.8(a) (such as the seller's name and address in a three-party situation) or other appropriate identifying information relating the transaction to the first billing. The debiting date for the particular installment, or the date the transaction took place, may be used as the date of the transaction on these subsequent statements.

*8(a)(1) Copy of credit document provided.*

1. *Format.* The information required by §226.8(a)(1) may appear either on the copy of the credit document reflecting the transaction or on the periodic statement.

*8(a)(2) Copy of credit document not provided—creditor and seller same or related person(s).*

1. *Property identification—sufficiency of description.* The ''brief identification'' provision in §226.8(a)(2) requires a designation that will enable the consumer to reconcile the periodic statement with the consumer's own records. In determining the sufficiency of the description, the following rules apply:

- While item-by-item descriptions are not necessary, reasonable precision is required. For example, *merchandise, miscellaneous, second-hand goods,* or *promotional items* would not suffice.
- A reference to a department in a sales establishment that accurately conveys the identification of the types of property or services available in the department is sufficient—for example, *jewelry, sporting goods.*

2. *Property identification—number or symbol.* The ''brief identification'' may be made by disclosing on the periodic statement a number or symbol that is related to an identification list printed elsewhere on the statement.

3. *Property identification—additional document.* In making the ''brief identification'' required by §226.8(a)(2), the creditor may identify the property by describing the transaction on a document accompanying the periodic statement (for example, on a facsimile draft). (See also footnote 17.)

4. *Small creditors.* Under footnote 18, which provides a further identification alternative to a creditor with fewer than 15,000 accounts, the creditor need count only its own accounts and not others serviced by the same data processor or other shared-service provider.

5. *Date of transaction—foreign transactions.* In a foreign transaction, the debiting date may be considered the transaction date.

*8(a)(3) Copy of credit document not provided—creditor and seller not same or related person(s).*

1. *Seller's name.* The requirement contemplates that the seller's name will appear on the periodic statement in essentially the same form as it appears on transaction documents provided to the consumer at the time of the sale. The seller's name may also be disclosed as, for example:

- A more complete spelling of the name that was alphabetically abbreviated on the receipt or other credit document.
- An alphabetical abbreviation of the name on the periodic statement even if the name appears in a more complete spelling on the receipt or other credit document. Terms that merely indicate the form of a business entity, such as *Inc., Co.,* or *Ltd.,* may always be omitted.

2. *Location of transaction.* The disclosure of the location where the transaction took place generally requires an indication of both the city, and the state or foreign country. If the seller has multiple stores or branches within that city, the creditor need not identify the specific branch at which the sale occurred.

3. *No fixed location.* When no meaningful address is available because the consumer did not make the purchase at any fixed location of the seller, the creditor:

- May omit the address.
- May provide some other identifying designation, such as *aboard plane, ABC Airways Flight, customer's home, telephone order,* or *mail order.*

4. *Date of transaction—foreign transactions.* See Comment 8(a)(2)–5.

*8(b) Nonsale credit.*

1. *Date of transaction.* If only one of the required dates is disclosed for a transaction, the creditor need not identify it. If the creditor discloses more than one date (for example, transaction date and debiting date), the creditor must identify each.

2. *Amount of transaction.* If credit is extended under an overdraft checking account plan or by means of a debit card with an overdraft feature, the amount to be disclosed is that of the credit extension, not the face amount of the check or the total amount of the debit/credit transaction.

3. *Amount—disclosure on cumulative basis.* If credit is extended under an overdraft checking account plan or by means of a debit card with an overdraft feature, the creditor may disclose the amount of the credit extensions on a cumulative daily basis, rather than the amount attributable to each check or each use of the debit/credit card.

4. *Identification of transaction type.* The creditor may identify a transaction by describing the type of advance it represents, such as cash advance, loan, overdraft loan, or any readily understandable trade name for the credit program.

References

*Statute:* Section 127(b)(2).

*Previous regulation:* Section 226.7(k).

*Other sections:* Section 226.7.

*1981 changes:* Section 226.8 has been streamlined and reorganized to facilitate its use. Technical detail has been deleted from the Regulation for inclusion in the commentary. The Regulation implements the amended section 127(b)(2) of the Act by providing for protection from civil liability under certain circumstances when required information is not provided and by reducing disclosure responsibilities for certain small creditors. For descriptive billing of nonsale transactions, the regulation now permits the use of the debiting date in all cases.

*Section 226.9—Subsequent Disclosure Requirements*

9(a) Furnishing Statement of Billing Rights.

9(a)(1) Annual Statement

1. *General.* The creditor may provide the annual billing rights statement:

• By sending it in one billing period per year to each consumer that gets a periodic statement for that period; or

• By sending a copy to all of its account holders sometime during the calendar year but not necessarily all in one billing period (for example, sending the annual notice in connection with renewal cards or when imposing annual membership fees).

2. *Substantially similar.* See the commentary to appendix G–3.

9(a)(2) Alternative Summary Statement

1. *Changing from long-form to short-form statement and vice versa.* If the creditor has been sending the long-form annual statement, and subsequently decides to use the alternative summary statement, the first summary statement must be sent no later than 12 months after the last long-form statement was sent. Conversely, if the creditor wants to switch to the long-form, the first long-form statement must be sent no later than 12 months after the last summary statement.

2. *Substantially similar.* See the commentary to appendix G–4.

9(b) Disclosures for Supplemental Credit Devices and Additional Features

1. *Credit device—examples. Credit device* includes, for example, a blank check, payee-designated check, blank draft or order, or authorization form for issuance of a check; it does not include a check issued payable to a consumer representing loan proceeds or the disbursement of a cash advance.

2. *Credit feature—examples.* A new credit *feature* would include, for example:

• The addition of overdraft checking to an existing account (although the regular checks that could trigger the overdraft feature are not themselves *devices*).

• The option to use an existing credit card to secure cash advances, when previously the card could only be used for purchases.

Paragraph 9(b)(1)

1. *Same finance charge terms.* If the new means of accessing the account is subject to the same finance charge terms as those previously disclosed, the creditor:

• Need only provide a reminder that the new device or feature is covered by the earlier disclosures. (For example, in mailing special checks that directly access the credit line, the creditor might give a disclosure such as ''Use this as you would your XYZ card to obtain a cash advance from our bank''); or

• May remake the §226.6(a) finance charge disclosures.

Paragraph 9(b)(2)

1. *Different finance charge terms.* If the finance charge terms are different from those previously disclosed, the creditor may satisfy the requirement to give the finance charge terms either by giving a complete set of new initial disclosures reflecting the terms of the added device or feature or by giving only the finance charge disclosures for the added device or feature.

9(c) Change in Terms

1. *Changes* initially disclosed. No notice of a change in terms need be given if the specific change is set forth initially, such as: Rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion but does not include specific terms for an increase (for example, when an increase may occur under the creditor's contract reservation right to increase the periodic rate). The rules in §226.5b(f) relating to home equity plans, however, limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by §226.9(c) because they are controlled by State or other applicable law include:

• The types of changes a creditor may make.

• How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under §226.6 or increases the minimum payment, unless an exception under §226.9(c)(2) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day free-ride period on purchases and the consumer will have fewer days during the billing cycle change.

9(c)(1) Written Notice Required

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 15 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 15 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 15 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change—in two circumstances:

- If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default.
- If the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not ''agreements'' between the consumer and the creditor for purposes of §226.9(c)(1): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under State law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Form of change-in-terms notice.* A complete new set of the initial disclosures containing the changed term complies with §226.9(c) if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. *Changes to home equity plans entered into on or after November 7, 1989.* Section 226.9(c) applies when, by written agreement under §226.5b(f)(3)(iii), a creditor changes the terms of a home equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:

• If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by §226.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by §226.5b (d)(12)(x) and (d)(12)(xi), unless these disclosures are unchanged from those given earlier.

• If the minimum payment requirement is changed, the creditor must include the disclosures required by §226.5(d)(5)(iii) (and, in variable-rate plans, the disclosures required by §226.5b (d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimim payment requirement. (See the commentary to §226.5b (d)(5)(iii), (d)(12)(x) and (d)(12)(xi) for a discussion of representative examples.)

When the terms are changed pursuant to a written agreement as described in §226.5b(f)(3)(iii), the advance-notice requirement does not apply.

9(c)(2) Notice Not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

• A change in the consumer's credit limit.

• A change in the name of the credit card or credit card plan.

• The substitution of one insurer for another.

• A termination or suspension of credit privileges.

• Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as "You may skip your October payment," or "We will waive your finance charges for January," may serve as the change-in-terms notice.

*9(c)(3) Notice for Home Equity Plans*

1. *Written request for reinstatement.* If a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under §226.9(c)(3) must state that fact.

2. *Notice not required.* A creditor need not provide a notice under this paragraph if, pursuant to the commentary to §226.5b(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.

*9(d) Finance Charge Imposed at Time of Transaction*

1. *Disclosure prior to imposition.* A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.

*9(e) Disclosures Upon Renewal of Credit or Charge Card*

1. *Coverage.* This paragraph applies to credit and charge card accounts of the type subject to 226.5a. (See §226.5a(a)(3) and the accompanying commentary for discussion of the types of accounts subject to §226.5a.) The disclosure requirements are triggered when a card issuer imposes any annual or other periodic fee on such an account, whether or not the card issuer originally was required to provide the application and solicitation disclosures described in §226.5a.

2. *Form.* The disclosures under this paragraph must be clear and conspicuous, but need not appear in a tabular format or in a prominent location. The disclosures need not be in a form the cardholder can retain.

3. *Terms at renewal.* Renewal notices must reflect the terms actually in effect at the time of renewal. For example, a card issuer that offers a preferential annual percentage rate to employees during their employment must send a renewal notice to employees disclosing the lower rate actually charged to employees (although the card issuer also may show the rate charged to the general public).

4. *Variable rate.* If the card issuer cannot determine the rate that will be in effect if the cardholder chooses to renew a variable-rate account, the card issuer may disclose the rate in effect at the time of mailing or delivery of the renewal notice. Alternatively, the card issuer may use the rate as of a specified date (and then update the rate from time to time, for example, each calendar month) or use an estimated rate under §226.5(c).

5. *Renewals more frequent than annual.* If a renewal fee is billed more often than annually, the renewal notice should be provided each time the fee is billed. In this instance, the fee need not be disclosed as an annualized amount. Alternatively, the card

issuer may provide the notice no less than once every twelve months if the notice explains the amount and frequency of the fee that will be billed during the time period covered by the disclosure, and also discloses the fee as an annualized amount. The notice under this alternative also must state the consequences of a cardholder's decision to terminate the account after the renewal notice period has expired. For example, if a $2 fee is billed monthly but the notice is given annually, the notice must inform the cardholder that the monthly charge is $2, the annualized fee is $24, and $2 will be billed to the account each month for the coming year unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid monthly charges if the cardholder terminates the account during the coming year but after the first month, the notice must disclose that fact.

6. *Terminating credit availability.* Card issuers have some flexibility in determining the procedures for how and when an account may be terminated. However, the card issuer must clearly disclose the time by which the cardholder must act to terminate the account to avoid paying a renewal fee. State and other applicable law govern whether the card issuer may impose requirements such as specifying that the cardholder's response be in writing or that the outstanding balance be repaid in full upon termination.

7. *Timing of termination by cardholder.* When a card issuer provides notice under §226.9(e)(1), a cardholder must be given at least 30 days or one billing cycle, whichever is less, from the date the notice is mailed or delivered to make a decision whether to terminate an account. When notice is given under §226.9(e)(2), a cardholder has 30 days from mailing or delivery to decide to terminate an account.

8. *Timing of notices.* A renewal notice is deemed to be provided when mailed or delivered. Similarly, notice of termination is deemed to be given when mailed or delivered.

9. *Prompt reversal of renewal fee upon termination.* In a situation where a cardholder has provided timely notice of termination and a renewal fee has been billed to a cardholder's account, the card issuer must reverse or otherwise withdraw the fee promptly. Once a cardholder has terminated an account, no additional action by the cardholder may be required.

*9(e)(3) Notification on Periodic Statements*

1. *Combined disclosures.* If a single disclosure is used to comply with both §§226.9(e) and 226.7, the periodic statement must comply with the rules in §§226.5a and 226.7. For example, the words *grace period* must be used and the name of the balance calculation method must be identified (if listed in §226.5a(g)) to comply with the requirements of §226.5a, even though the use of those terms would not otherwise be required for periodic statements under §226.7. A card issuer may include some of the renewal disclosures on a periodic statement and others on a separate document so long as there is some reference indicating that they relate to one another. All renewal disclosures must be provided to a cardholder at the same time.

2. *Preprinted notices on periodic statements.* A card issuer may preprint the required information on its periodic statements. A card issuer that does so, however, using the advance notice option under §226.9(e)(1), must make clear on the periodic statement when the preprinted renewal disclosures are applicable. For example, the card issuer could include a special notice (not preprinted) at the appropriate time that the renewal fee will be billed in the following billing cycle, or could show the renewal date as a regular (preprinted) entry on all periodic statements.

*9(f) Change in Credit Card Account Insurance Provider*

1. *Coverage.* This paragraph applies to credit card accounts of the type subject to §226.5a if credit insurance (typically life, disability, and unemployment insurance) is offered on the outstanding balance of such an account. (Credit card accounts subject to §226.9(f) are the same as those subject to §226.9(e); see comment 9(e)–1.) Charge card accounts are not covered by this paragraph. In addition, the disclosure requirements of this paragraph apply only where the card issuer initiates the change in insurance providers. For example, if the card issuer's current insurance provider is merged into or acquired by another company, these disclosures would not be required. Disclosures also need not be given in cases where card issuers pay for credit insurance themselves and do not separately charge the cardholder.

2. *No increase in rate or decrease in coverage.* The requirement to provide the disclosure arises when the card issuer changes the provider of insurance, even if there will be no increase in the premium rate charged the consumer and no decrease in coverage under the insurance policy.

3. *Form of notice.* If a substantial decrease in coverage will result from the change in providers, the card issuer either must explain the decrease or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. (See the commentary to appendix G–13.)

4. *Discontinuation of insurance.* In addition to stating that the cardholder may cancel the insurance, the card issuer may explain the effect the cancellation would have on the consumer's credit card plan.

5. *Mailing by third party.* Although the card issuer is responsible for the disclosures, the insurance provider or another third party

may furnish the disclosures on the card issuer's behalf.

*9(f)(3) Substantial Decrease in Coverage*

1. *Determination.* Whether a substantial decrease in coverage will result from the change in providers is determined by the two-part test in §226.9(f)(3): First, whether the decrease is in a significant term of coverage; and second, whether the decrease might reasonably be expected to affect a cardholder's decision to continue the insurance. If both conditions are met, the decrease must be disclosed in the notice.

References

*Statute:* Section 127(a)(7).

*Other sections:* Sections 226.4 through 226.7 and appendix G.

*Previous regulation:* Section 226.7 (d) through (f) and (j) and Interpretation §§226.705 and 226.708.

*1981 changes:* Section 226.9(a) implements the statutory change that the long-form statement of billing rights be provided only once a year. The provision now permits two rather than one means of providing the long-form statement to consumers. The verbatim text of the annual statement is no longer required; creditors may use any version "substantially similar" to the one in appendix G. If the creditor elects to use the alternative summary statement, the new regulation no longer requires that the long-form statement be sent upon receiving a billing error notice and at the consumer's request. The rules in §226.708 on switching the type of billing rights statement used have been modified.

Under §226.9(b) disclosure requirements have been streamlined when supplemental credit devices or new credit features are added to an existing open-end plan.

Section 226.9(c) substantially changes the change-in-terms rules. Change-in-terms disclosures must now be made 15 days before the effective date of the change, rather than 15 days before the billing cycle in which the change will take effect. The kinds of changes that will trigger disclosures have been reduced: change-in-terms notices are no longer required for the types of changes described in §226.9(c)(2). But the provision reverses Interpretation §226.705, which indicated that certain changes in the balance computation method did not require disclosure because they could result in lowered finance charges; now, any change in the balance computation method requires disclosure.

When a finance charge is imposed at the time of a transaction, §226.9(d) only requires disclosure of the finance charge at point of sale; the amount financed and annual percentage rate figured in accordance with the closed-end credit provisions need no longer be disclosed. Furthermore, the finance charge disclosure now may be made orally by the person honoring the card.

*Section 226.10—Prompt Crediting of Payments*

*10(a) General rule.*

1. *Crediting date.* Section 226.10(a) does not require the creditor to post the payment to the consumer's account on a particular date; the creditor is only required to credit the payment as of the date of receipt.

2. *Date of receipt.* The "date of receipt" is the date that the payment instrument or other means of completing the payment reaches the creditor. For example:

- Payment by check is received when the creditor gets it, not when the funds are collected.
- In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.
- If the consumer elects to have payment made by a third-party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third-party payor's check or other transfer medium, such as an electronic fund transfer, as long as the payment meets the creditor's requirements as specified under §226.10(b).

*10(b) Specific requirements for payments.*

1. *Payment requirements.* The creditor may specify requirements for making payments, such as:

- Requiring that payments be accompanied by the account number or the payment stub.
- Setting a cut-off hour for payment to be received, or set different hours for payment by mail and payments made in person.
- Specifying that only checks or money orders should be sent by mail.
- Specifying that payment is to be made in U.S. dollars.
- Specifying one particular address for receiving payments, such as a post office box.

The creditor may be prohibited, however, from specifying payment by preauthorized electronic fund transfer. (See section 913 of the Electronic Fund Transfer Act.)

2. *Payment requirements—limitations.* Requirements for making payments must be reasonable; it should not be difficult for most consumers to make conforming payments. For example, it would not be reasonable to require that all payments be made in person between 10 a.m. and 11 a.m., since this would require consumers to take time off from their jobs to deliver payments.

3. *Acceptance of non-conforming payments.* If the creditor accepts a non-conforming payment (for example, payment at a branch office, when it had specified that payment be sent to headquarters), finance charges may accrue for the period between receipt and crediting of payments.

4. *Implied guidelines for payments.* In the absence of specified requirements for making payments (see §226.10(b)):

- Payments may be made at any location where the creditor conducts business.
- Payments may be made any time during the creditor's normal business hours.
- Payments may be made by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the creditor and consumer have so agreed.

References

*Statute:* Section 164.

*Other sections:* Section 226.7.

*Previous regulation:* Section 226.7(g).

*1981 changes:* Much of the explanatory detail of the previous regulation is now in the commentary. The revised regulation gives the creditor 5 days in which to credit non-conforming payments, whereas the previous regulation required the crediting of such payments promptly, with an outside limit of 5 days. The 5 days in which to credit are available whenever the creditor accepts payment that does not conform to the creditor's disclosed specifications, in contrast to the previous regulation, which only allowed deferred crediting for payments made at the wrong location.

*Section 226.11—Treatment of Credit Balances*

1. *Timing of refund.* The creditor may also fulfill its obligations under §226.11 by:

- Refunding any credit balance to the consumer immediately.
- Refunding any credit balance prior to receiving a written request (under §226.11(b)) from the consumer.
- Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

2. *Amount of refund.* The phrase *any part of the credit balance remaining in the account* in §226.11(b) and (c) means the amount of the credit balance at the time the creditor is required to make the refund. The creditor may take into consideration intervening purchases or other debits to the consumer's account (including those that have not yet been reflected on a periodic statement) that decrease or eliminate the credit balance.

*Paragraph 11(b).*

1. *Written requests—standing orders.* The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.

*Paragraph 11(c).*

1. *Good faith effort to refund.* The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the consumer's last known address or telephone number, or both.

2. *Good faith effort unsuccessful.* Section 226.11 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.

References

*Statute:* Section 165.

*Previous regulation:* Section 226.7(h).

*1981 changes:* Under the previous regulation, the creditor's duty to refund credit balances applied only to ''excess payments''; §226.11 of the revised regulation implements the amendments to section 165 of the statute which impose refunding duties on the creditor whatever the source of the credit balance. The revised regulation permits the creditor, in computing the refund, to take account of intervening debits, not just the difference between the previous balance and the overpayment as is provided in the previous regulation. The revised regulation gives the creditor 7 business days in which to make the refund after receiving the consumer's written request, whereas the previous regulation required the creditor to make the refund promptly, with an outside limit of 5 business days. This provision also implements the amended statute by requiring a good faith effort to refund the credit balance after 6 months.

*Section 226.12—Special Credit Card Provisions*

1. *Scope.* Sections 226.12(a) and (b) deal with the issuance and liability rules for credit cards, whether the card is intended for consumer, business, or any other purposes. Sections 226.12(a) and (b) are exceptions to the general rule that the regulation applies only to consumer credit. (See §§226.1 and 226.3.)

*12(a) Issuance of credit cards.*

*Paragraph 12(a)(1)*

1. *Explicit request.* A request or application for a card must be explicit. For example, a request for overdraft privileges on a checking account does not constitute an application for a credit card with overdraft checking features.

2. *Addition of credit features.* If the consumer has a non-credit card, the addition of credit features to the card (for example, the granting of overdraft privileges on a checking account when the consumer already has

a check guarantee card) constitutes issuance of a credit card.

3. *Variance of card from request.* The request or application need not correspond exactly to the card that is issued. For example:

• The name of the card requested may be different when issued.

• The card may have features in addition to those reflected in the request or application.

4. *Permissible form of request.* The request or application may be oral (in response to a telephone solicitation by a card issuer, for example) or written.

5. *Time of issuance.* A credit card may be issued in response to a request made before any cards are ready for issuance (for example, if a new program is established), even if there is some delay in issuance.

6. *Persons to whom cards may be issued.* A card issuer may issue a credit card to the person who requests it, and to anyone else for whom that person requests a card and who will be an authorized user on the requester's account. In other words, cards may be sent to consumer A on A's request, and also (on A's request) to consumers B and C, who will be authorized users on A's account. In these circumstances, the following rules apply:

• The additional cards may be imprinted in either A's name or in the names of B and C.

• No liability for unauthorized use (by persons other than B and C), not even the $50, may be imposed on B or C since they are merely users and not *cardholders* as that term is defined in §226.2 and used in §226.12(b); of course, liability of up to $50 for unauthorized use of B's and C's cards may be imposed on A.

• Whether B and C may be held liable for their own use, or on the account generally, is a matter of state or other applicable law.

7. *Issuance of non-credit cards.* i. *General.* Under §226.12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A non-credit card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request.

ii. *Examples.* A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by §226.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

8. *Unsolicited issuance of PINs.* A card issuer may issue personal identification numbers (PINs) to existing credit cardholders without a specific request from the cardholders, provided the PINs cannot be used alone to obtain credit. For example, the PINs may be necessary if consumers wish to use their existing credit cards at automated teller machines or at merchant locations with point-of-sale terminals that require PINs.

*Paragraph 12(a)(2)*

1. *Renewal. Renewal* generally contemplates the regular replacement of existing cards because of, for example, security reasons or new technology or systems. It also includes the re-issuance of cards that have been suspended temporarily, but does not include the opening of a new account after a previous account was closed.

2. *Substitution—examples. Substitution* encompasses the replacement of one card with another because the underlying account relationship has changed in some way—such as when the card issuer has:

• Changed its name.

• Changed the name of the card.

• Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addition, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.) The *substitution* of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.

• Substituted a card user's name on the substitute card for the cardholder's name appearing on the original card.

• Changed the merchant base. However, the new card must be honored by at least one of the persons that honored the original card.

3. *Substitution—successor card issuer. Substitution* also occurs when a successor card issuer replaces the original card issuer (for example, when a new card issuer purchases

the accounts of the original issuer and issues its own card to replace the original one). A permissible substitution exists even if the original issuer retains the existing receivables and the new card issuer acquires the right only to future receivables, provided use of the original card is cut off when use of the new card becomes possible.

4. *Substitution—non-credit-card plan.* A credit card that replaces a retailer's open-end credit plan *not* involving a credit card is not considered a substitute for the retailer's plan—even if the consumer used the retailer's plan. A credit card cannot be issued in these circumstances without a request or application.

5. *One-for-one rule.* An accepted card may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances.

6. *One-for-one rule—exceptions.* The regulation does not prohibit the card issuer from:

i. Replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing an accepted card with more than one renewal or substitute card, provided that:

A. No replacement card accesses any account not accessed by the accepted card;

B. For terms and conditions required to be disclosed under § 226.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under § 226.9(c); and

C. Under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

7. *Methods of terminating replaced card.* The card issuer need not physically retrieve the original card, provided the old card is voided in some way; for example:

• The issuer includes with the new card a notification that the existing card is no longer valid and should be destroyed immediately.

• The original card contained an expiration date.

• The card issuer, in order to preclude use of the card, reprograms computers or issues instructions to authorization centers.

8. *Incomplete replacement.* If a consumer has duplicate credit cards on the same account (Card A—one type of bank credit card, for example), the card issuer may not replace the duplicate cards with one Card A and one Card B (Card B—another type of bank credit card) unless the consumer requests Card B.

9. *Multiple entities.* Where multiple entities share responsibilities with respect to a credit card issued by one of them, the entity that issued the card may replace it on an unsolicited basis, if that entity terminates the original card by voiding it in some way, as described in comment 12(a)(2)–7. The other entity or entities may not issue a card on an unsolicited basis in these circumstances.

*12(b) Liability of cardholder for unauthorized use.*

1. *Meaning of cardholder.* For purposes of this provision, *cardholder* includes any person (including organizations) to whom a credit card is issued for any purpose, including business. When a corporation is the cardholder, required disclosures should be provided to the corporation (as opposed to an employee user).

2. *Imposing liability.* A card issuer is not required to impose liability on a cardholder for the unauthorized use of a credit card; if the card issuer does not seek to impose liability, the issuer need not conduct any investigation of the cardholder's claim.

3. *Reasonable investigation.* If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

v. Requesting documentation to assist in the verification of the claim.

vi. Requesting a written, signed statement from the cardholder or authorized user.

vii. Requesting a copy of a police report, if one was filed.

viii. Requesting information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

*12(b)(1) Limitation on amount.*

1. *Meaning of authority.* Footnote 22 defines unauthorized use in terms of whether the user has *actual, implied, or apparent authority.* Whether such authority exists must be determined under state or other applicable law.

2. *Liability limits—dollar amounts.* As a general rule, the cardholder's liability for a series of unauthorized uses cannot exceed either $50 or the value obtained through the unauthorized use before the care issuer is notified, whichever is less.

*12(b)(2) Conditions of liability.*

1. *Issuer's option not to comply.* A card issuer that chooses not to impose any liability on cardholders for unauthorized use need not comply with the disclosure and identification requirements discussed below.

*Paragraph 12(b)(2)(ii).*

1. *Disclosure of liability and means of notifying issuer.* The disclosures referred to in §226.12(b)(2)(ii) may be given, for example, with the initial disclosures under §226.6, on the credit card itself, or on periodic statements. They may be given at any time preceding the unauthorized use of the card.

*Paragraph 12(b)(2)(iii).*

1. *Means of identifying cardholder or user.* To fulfill the condition set forth in §226.12(b)(2)(iii), the issuer must provide some method whereby the cardholder or the authorized user can be identified. This could include, for example, signature, photograph, or fingerprint on the card, or electronic or mechanical confirmation.

2. *Identification by magnetic strip.* Unless a magnetic strip (or similar device not readable without physical aids) must be used in conjunction with a secret code or the like, it would not constitute sufficient means of identification. Sufficient identification also does not exist if a *pool* or group card, issued to a corporation and signed by a corporate agent who will not be a user of the card, is intended to be used by another employee for whom no means of identification is provided.

3. *Transactions not involving card.* The cardholder may not be held liable under §226.12(b) when the card itself (or some other sufficient means of identification of the cardholder) is not presented. Since the issuer has not provided a means to identify the user under these circumstances, the issuer has not fulfilled one of the conditions for imposing liability. For example, when merchandise is ordered by telephone by a person without authority to do so, using a credit card account number or other number only (which may be widely available), no liability may be imposed on the cardholder.

*12(b)(3) Notification to card issuer.*

1. *How notice must be provided.* Notice given in a normal business manner—for example, by mail, telephone, or personal visit—is effective even though it is not given to, or does not reach, some particular person within the issuer's organization. Notice also may be effective even though it is not given at the address or phone number disclosed by the card issuer under §226.12(b)(2)(ii).

2. *Who must provide notice.* Notice of loss, theft, or possible unauthorized use need not be initiated by the cardholder. Notice is sufficient so long as it gives the *pertinent information* which would include the name or card number of the cardholder and an indication that unauthorized use has or may have occurred.

3. *Relationship to §226.13.* The liability protections afforded to cardholders in §226.12 do not depend upon the cardholder's following the error resolution procedures in §226.13. For example, the written notification and time limit requirements of §226.13 do not affect the section 226.12 protections.

*12(b)(5) Business use of credit cards.*

1. *Agreement for higher liability for business use cards.* The card issuer may not rely on §226.12(b)(5) if the business is clearly not in a position to provide 10 or more cards to employees (for example, if the business has only 3 employees). On the other hand, the issuer need not monitor the personnel practices of the business to make sure that it has at least 10 employees at all times.

2. *Unauthorized use by employee.* The protection afforded to an employee against liability for unauthorized use in excess of the limits set in §226.12(b) applies only to unauthorized use by someone other then the employee. If the employee uses the card in an unauthorized manner, the regulation sets no restriction on the employee's potential liability for such use.

*12(c) Right of cardholder to assert claims or defenses against card issuer.*

1. *Relationship to §226.13.* The §226.12(c) credit card ''holder in due course'' provision deals with the consumer's right to assert against the card issuer a claim or defense concerning property or services purchased with a credit card, if the merchant has been unwilling to resolve the dispute. Even though certain merchandise disputes, such as non-delivery of goods, may also constitute ''billing errors'' under §226.13, that section operates independently of §226.12(c). The cardholder whose asserted billing error involves undelivered goods may institute the error resolution procedures of §226.13; but whether or not the cardholder has done so, the cardholder may assert claims or defenses under §226.12(c). Conversely, the consumer may pay a disputed balance and thus have no further right to assert claims and defenses, but still may assert a billing error if notice of that billing error is given in the proper

time and manner. An assertion that a particular transaction resulted from unauthorized use of the card could also be both a ''defense'' and a billing error.

2. *Claims and defenses assertible.* Section 226.12(c) merely preserves the consumer's right to assert against the card issuer any claims or defenses that can be asserted against the merchant. It does not determine what claims or defenses are valid as to the merchant; this determination must be made under state or other applicable law.

*12(c)(1) General rule.*

1. *Situations excluded and included.* The consumer may assert claims or defenses only when the goods or services are ''purchased with the credit card.'' This could include:

• Mail or telephone orders, if the purchase is charged to the credit card account.

But it would exclude:

• Use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. Such a transaction would not involve ''property or services purchased with the credit card.''

• The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to the credit extended on the overdraft line.)

• Purchases made by use of a check guarantee card in conjunction with a cash advance check (or by cash advance checks alone). See footnote 24. A cash advance check is a check that, when written, does not draw on an asset account; instead, it is charged entirely to an open-end credit account.

• Purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit lines (see footnote 24). The debit card exemption applies whether the card accesses an asset account via point-of-sale terminals, automated teller machines, or in any other way, and whether the card qualifies as an ''access device'' under Regulation E or is only a paper-based debit card. If a card serves both as an ordinary credit card and also as check guarantee or debit card, a transaction will be subject to this rule on asserting claims and defenses when used as an ordinary credit card, but not when used as a check guarantee or debit card.

*12(c)(2) Adverse credit reports prohibited.*

1. *Scope of prohibition.* Although an amount in dispute may not be reported as delinquent until the matter is resolved:

i. That amount may be reported as disputed.

ii. Nothing in this provision prohibits the card issuer from undertaking its normal collection activities for the delinquent and undisputed portion of the account.

2. *Settlement of dispute.* A card issuer may not consider a dispute settled and report an amount disputed as delinquent or begin collection of the disputed amount until it has completed a reasonable investigation of the cardholder's claim. A reasonable investigation requires an independent assessment of the cardholder's claim based on information obtained from both the cardholder and the merchant, if possible. In conducting an investigation, the card issuer may request the cardholder's reasonable cooperation. The card issuer may not automatically consider a dispute settled if the cardholder fails or refuses to comply with a particular request. However, if the card issuer otherwise has no means of obtaining information necessary to resolve the dispute, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation.

*12(c)(3) Limitations.*

*Paragraph 12(c)(3)(i).*

1. *Resolution with merchant.* The consumer must have tried to resolve the dispute with the merchant. This does not require any special procedures or correspondence between them, and is a matter for factual determination in each case. The consumer is not required to seek satisfaction from the manufacturer of the goods involved. When the merchant is in bankruptcy proceedings, the consumer is not required to file a claim in those proceedings.

*Paragraph 12(c)(3)(ii).*

1. *Geographic limitation.* The question of where as transaction occurs (as in the case of mail or telephone orders, for example) is to be determined under state or other applicable law.

2. *Merchant honoring card.* The exceptions (stated in footnote 26) to the amount and geographic limitations do not apply if the merchant merely honors, or indicates through signs or advertising that it honors, a particular credit card.

*12(d) Offsets by card issuer prohibited.*

*Paragraph 12(d)(1).*

1. *Holds* on accounts. ''Freezing'' or placing a hold on funds in the cardholder's deposit account is the functional equivalent of an offset and would contravene the prohibition in §226.12(d)(1), unless done in the context of one of the exceptions specified in §226.12(d)(2). For example, if the terms of a security agreement permitted the card issuer to place a hold on the funds, the hold would not violate the offset prohibition. Similarly, if an order of a bankruptcy court required the card issuer to turn over deposit account funds to the trustee in bankruptcy, the issuer would not violate the regulation by

placing a hold on the funds in order to comply with the court order.

2. *Funds intended as deposits.* If the consumer tenders funds as a deposit (to a checking account, for example), the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account.

3. *Types of indebtedness; overdraft accounts.* The offset prohibition applies to any indebtedness arising from transactions under a credit card plan, including accrued finance charges and other charges on the account. The prohibition also applies to balances arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses an overdraft line of credit, the resulting indebtedness is subject to the offset prohibition since it is incurred through a credit card plan, even though the consumer did not use an associated check guarantee or debit card.

4. *When prohibition applies in case of termination of account.* The offset prohibition applies even after the card issuer terminates the cardholder's credit card privileges, if the indebtedness was incurred prior to termination. If the indebtedness was incurred after termination, the prohibition does not apply.

*Paragraph 12(d)(2).*

1. *Security interest—limitations.* In order to qualify for the exception stated in §226.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's initial disclosures under §226.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in §226.12(d)(2). For a security interest to qualify for the exception under §226.12(d)(2) the following conditions must be met:

• The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. Indicia of the consumer's awareness and intent could include, for example:

—Separate signature or initials on the agreement indicating that a security interest is being given

—Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions

—Reference to a specific amount of deposited funds or to a specific deposit account number

• The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by §226.12(d)(2).

2. *Security interest—after-acquired property.* As used in §226.12(d), the term *security interest* does not exclude (as it does for other Regulation Z purposes) interests in after-acquired property. Thus, a consensual security interest in deposit-account funds, including funds deposited after the granting of the security interest, would constitute a permissible exception to the prohibition on offsets.

3. *Court order.* If the card issuer obtains a judgment against the cardholder, and if State and other applicable law and the terms of the judgment do not so prohibit, the card issuer may offset the indebtedness against the cardholder's deposit account.

*Paragraph 12(d)(3).*

1. *Automatic payment plans—scope of exception.* With regard to automatic debit plans under §226.12(d)(3), the following rules apply:

• The cardholder's authorization must be in writing and signed or initialed by the cardholder.

• The authorizing language need not appear directly above or next to the cardholder's signature or initials, provided it appears on the same document and that it clearly spells out the terms of the automatic debit plan.

• If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act), the fact that the option exists should be clearly indicated.

2. *Automatic payment plans—additional exceptions.* The following practices are not prohibited by §226.12(d)(1):

• Automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).

• Debiting the cardholder's deposit account on the cardholder's *specific* request rather than on an *automatic* periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill).

*12(e) Prompt notification of returns and crediting of refunds.*

*Paragraph 12(e)(1).*

1. *Normal channels.* The term *normal channels* refers to any network or interchange system used for the processing of the original charge slips (or equivalent information concerning the transaction).

*Paragraph 12(e)(2).*

1. *Crediting account.* The card issuer need not actually post the refund to the consumer's account within 3 business days after receiving the credit statement, provided that

it credits the account as of a date within that time period.

References

*Statute:* Sections 103(1), 132, 133, 135, 162, 166, 167, 169, and 170.

*Other sections:* Section 226.13.

*Other regulations:* Regulation E (12 CFR 205).

*Previous regulation:* Section 226.13.

*1981 changes:* The issuance rules in §226.12(a) make clear that cards may be sent to the person making the request and also to any other person for whom a card is requested, except that no liability for unauthorized use may be imposed on persons who are only authorized users.

The principal differences in §226.12(b) about conditions of liability are as follows: the requirement that the cardholder be given a postage-paid, preaddressed card or envelope for notification of loss or theft has been deleted (corresponding to an amendment to the act); the required disclosures of maximum liability and of means of notification have been simplified; and the required provision of a means of identification has been changed in that the issuer now may provide a means to identify either the cardholder or the authorized user. Finally, anyone may provide the notification to the card issuer, not just the cardholder.

Section 226.12(d) on offsets clarifies that the offset prohibition does not apply to consensual security interests. The separate promptness standard which used to apply in addition to the 7-business-day and 3-business-day standards has been deleted from §226.12(e) on prompt notification of returns. Section 226.12(f) now clarifies rules on clearing accounts.

Section 226.12(g), dealing with the relationship of the regulation to Regulation E (Electronic Fund Transfers), has been added.

*Section 226.13—Billing Error Resolution*

1. *General prohibitions.* Footnote 27 prohibits a creditor from responding to a consumer's billing error allegation by accelerating the debt or closing the account, and reflects protections authorized by section 161(d) of the Truth in Lending Act and section 701 of the Equal Credit Opportunity Act. The footnote also alerts creditors that failure to comply with the error resolution procedures may result in the forfeiture of disputed amounts as prescribed in section 161(e) of the Act. (Any failure to comply may also be a violation subject to the liability provisions of section 130 of the Act.)

2. *Charges for error resolution.* If a billing error occurred, whether as alleged or in a different amount or manner, the creditor may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation) and must credit the consumer's account if such a charge was assessed pending resolution. Since the Act grants the consumer error resolution rights, the creditor should avoid any chilling effect on the good faith assertion of errors that might result if charges are assessed when no billing error has occurred.

*13(a) Definition of billing error.*

1. *Actual, implied, or apparent authority.* Whether use of a credit card or open-end credit plan is authorized is determined by state or other applicable law.

*Paragraph 13(a)(3).*

1. *Coverage.* Section 226.13(a)(3) covers disputes about goods or services that are ''not accepted'' or ''not delivered . . . as agreed''; for example:

- The appearance on a periodic statement of a purchase, when the consumer refused to take delivery of goods because they did not comply with the contract.
- Delivery of property or services different from that agreed upon.
- Delivery of the wrong quantity.
- Late delivery.
- Delivery to the wrong location.

Section 226.13(a)(3) does not apply to a dispute relating to the quality of property or services that the consumer accepts. Whether acceptance occurred is determined by state or other applicable law.

*Paragraph 13(a)(5).*

1. *Computational errors.* In periodic statements that are combined with other information, the error resolution procedures are triggered only if the consumer asserts a computational billing error in the credit-related portion of the periodic statement. For example:

- If a bank combines a periodic statement reflecting the consumer's credit card transactions with the consumer's monthly checking statement, a computational error in the checking account portion of the combined statement is not a billing error.

*Paragraph 13(a)(6).*

1. *Documentation requests.* A request for documentation such as receipts or sales slips, unaccompanied by an allegation of an error under §226.13(a) or a request for additional clarification under §226.13(a)(6), does not trigger the error resolution procedures. For example, a request for documentation merely for purposes such as tax preparation or recordkeeping does not trigger the error resolution procedures.

*13(b) Billing error notice.*

1. *Withdrawal.* The consumer's withdrawal of a billing error notice may be oral or written.

*Paragraph 13(b)(1).*

1. *Failure to send periodic statement—timing.* If the creditor has failed to send a periodic statement, the 60-day period runs from the time the statement should have been sent.

Once the statement is provided, the consumer has another 60 days to assert any billing errors reflected on it.

2. *Failure to reflect credit—timing.* If the periodic statement fails to reflect a credit to the account, the 60-day period runs from transmittal of the statement on which the credit should have appeared.

3. *Transmittal.* If a consumer has arranged for periodic statements to be held at the financial institution until called for, the statement is ''transmitted'' when it is first made available to the consumer.

*Paragraph 13(b)(2).*

1. *Identity of the consumer.* The billing error notice need not specify both the name and the account number if the information supplied enables the creditor to identify the consumer's name and account.

*13(c) Time for resolution; general procedures.*

1. *Temporary or provisional corrections.* A creditor may temporarily correct the consumer's account in response to a billing error notice, but is not excused from complying with the remaining error resolution procedures within the time limits for resolution.

2. *Correction without investigation.* A creditor may correct a billing error in the manner and amount asserted by the consumer without the investigation or the determination normally required. The creditor must comply, however, with all other applicable provisions. If a creditor follows this procedure, no presumption is created that a billing error occurred.

*Paragraph 13(c)(2).*

1. *Time for resolution.* The phrase *two complete billing cycles* means 2 actual billing cycles occurring after receipt of the billing error notice, not a measure of time equal to 2 billing cycles. For example, if a creditor on a monthly billing cycle receives a billing error notice mid-cycle, it has the remainder of that cycle plus the next 2 full billing cycles to resolve the error.

*13(d) Rules pending resolution.*

1. *Disputed amount. Disputed amount* is the dollar amount alleged by the consumer to be in error. When the allegation concerns the description or identification of the transaction (such as the date or the seller's name) rather than a dollar amount, the disputed amount is the amount of the transaction or charge that corresponds to the disputed transaction identification. If the consumer alleges a failure to send a periodic statement under §226.13(a)(7),the disputed amount is the entire balance owing.

*13(d)(1) Consumer's right to withhold disputed amount; collection action prohibited.*

1. *Prohibited collection actions.* During the error resolution period, the creditor is prohibited from trying to collect the disputed amount from the consumer. Prohibited collection actions include, for example, instituting court action, taking a lien, or instituting attachment proceedings.

2. *Right to withhold payment.* If the creditor reflects any disputed amount or related finance or other charges on the periodic statement, and is therefore required to make the disclosure under footnote 30, the creditor may comply with that disclosure requirement by indicating that payment of any disputed amount is not required pending resolution. Making a disclosure that only refers to the disputed amount would, of course, in no way affect the consumer's right under §226.13(d)(1) to withhold related finance and other charges. The disclosure under footnote 30 need not appear in any specific place on the periodic statement, need not state the specific amount that the consumer may withhold, and may be preprinted on the periodic statement.

3. *Imposition of additional charges on undisputed amounts.* The consumer's withholding of a disputed amount from the total bill cannot subject undisputed balances (including new purchases or cash advances made during the present or subsequent cycles) to the imposition of finance or other charges. For example, if on an account with a free-ride period (that is, an account in which paying the new balance in full allows the consumer to avoid the imposition of additional finance charges), a consumer disputes a $2 item out of a total bill of $300 and pays $298 within the free-ride period, the consumer would not lose the free-ride as to any undisputed amounts, even if the creditor determines later that no billing error occurred. Furthermore, finance or other charges may not be imposed on any new purchases or advances that, absent the unpaid disputed balance, would not have finance or other charges imposed on them. Finance or other charges that would have been incurred even if the consumer had paid the disputed amount would not be affected.

4. *Automatic payment plans—coverage.* The coverage of this provision is limited to the card issuer's intra-institutional payment plans. It does not apply to:

- Inter-institutional payment plans that permit a cardholder to pay automatically any credit card indebtedness from an asset account not held by the card issuer receiving payment.
- Intra-institutional automatic payment plans offered by financial institutions that are not credit card issuers.

5. *Automatic payment plans—time of notice.* While the card issuer does not have to restore or prevent the debiting of a disputed amount if the billing error notice arrives after the 3-business-day cut-off, the card issuer must, however, prevent the automatic debit of any part of the disputed amount that is still outstanding and unresolved at the time of the next scheduled debit date.

*13(d)(2) Adverse credit reports prohibited.*

1. *Report of dispute*. Although the creditor must not issue an adverse credit report because the consumer fails to pay the disputed amount or any related charges, the creditor may report that the amount or the account is in dispute. Also, the creditor may report the account as delinquent if undisputed amounts remain unpaid.

2. *Person*. During the error resolution period, the creditor is prohibited from making an adverse credit report about the disputed amount to any person—including employers, insurance companies, other creditors, and credit bureaus.

3. *Creditor's agent*. Whether an agency relationship exists between a creditor and an issuer of an adverse credit report is determined by State or other applicable law.

*13(e) Procedures if billing error occurred as asserted*.

1. *Correction of error*. The phrase *as applicable* means that the necessary corrections vary with the type of billing error that occurred. For example, a misidentified transaction (or a transaction that is identified by one of the alternative methods in §226.8) is cured by properly identifying the transaction and crediting related finance and any other charges imposed. The creditor is not required to cancel the amount of the underlying obligation incurred by the consumer.

2. *Form of correction notice*. The written correction notice may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the periodic statement is used, the amount of the billing error must be specifically identified.

If a separate billing error correction notice is provided, the accompanying or subsequent periodic statement reflecting the corrected amount may simply identify it as *credit*.

*13(f) Procedures if different billing error or no billing error occurred*.

1. *Different billing error*. Examples of a *different billing error* include:

- Differences in the amount of an error (for example, the customer asserts a $55.00 error but the error was only $53.00).
- Differences in other particulars asserted by the consumer (such as when a consumer asserts that a particular transaction never occurred, but the creditor determines that only the seller's name was disclosed incorrectly).

2. *Form of creditor's explanation*. The written explanation (which also may notify the consumer of corrections to the account) may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the creditor uses the periodic statement for the explanation and correction(s), the corrections must be specifically identified. If a separate explanation, including the correction notice, is provided, the enclosed or subsequent periodic statement reflecting the corrected amount may simply identify it as a *credit*. The explanation may be combined with the creditor's notice to the consumer of amounts still owing, which is required under §226.13(g)(1), provided it is sent within the time limit for resolution. (See Commentary to §226.13(e).)

*13(g) Creditor's rights and duties after resolution*.

*Paragraph 13(g)(1)*.

1. *Amounts owed by consumer*. Amounts the consumer still owes may include both minimum periodic payments and related finance and other charges that accrued during the resolution period. As explained in the commentary to §226.13(d)(1), even if the creditor later determines that no billing error occurred, the creditor may not include finance or other charges that are imposed on undisputed balances solely as a result of a consumer's withholding payment of a disputed amount.

2. *Time of notice*. The creditor need not send the notice of amount owed within the time period for resolution, although it is under a duty to send the notice promptly after resolution of the alleged error. If the creditor combines the notice of the amount owed with the explanation required under §226.13(f)(1), the combined notice must be provided within the time limit for resolution.

*Paragraph 13(g)(2)*.

1. The creditor need not allow any free-ride period disclosed under §§226.6(a)(1) and 226.7(j) to pay the amount due under §226.13(g)(1) if no error occurred and the consumer was not entitled to a free-ride period at the time the consumer asserted the error.

*Paragraph 13(g)(3)*.

1. *Time for payment*. The consumer has a minimum of 10 days to pay (measured from the time the consumer could reasonably be expected to have received notice of the amount owed) before the creditor may issue an adverse credit report; if an initially disclosed free-ride period allows the consumer a longer time in which to pay, the consumer has the benefit of that longer period.

*Paragraph 13(g)(4)*.

1. *Credit reporting*. Under §226.13(g)(4)(i) and (iii) the creditor's additional credit reporting responsibilities must be accomplished promptly. The creditor need not establish costly procedures to fulfill this requirement. For example, a creditor that reports to a credit bureau on scheduled updates need not transmit corrective information by an unscheduled computer or magnetic tape; it may provide the credit bureau with the correct information by letter or other commercially reasonable means when using the scheduled update would not be "prompt." The creditor is not responsible for ensuring

that the credit bureau corrects its information immediately.

2. *Adverse report to credit bureau.* If a creditor made an adverse report to a credit bureau that disseminated the information to other creditors, the creditor fulfills its §226.13(g)(4)(ii) obligations by providing the consumer with the name and address of the credit bureau.

*13(i) Relation to Electronic Fund Transfer Act and Regulation E.*

1. *Coverage.* Credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension.

2. *Incidental credit under agreement.* Credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution is governed by §226.13(i), which provides that certain error resolution procedures in both this regulation and Regulation E apply. Incidental credit that is not extended under an agreement between the consumer and the financial institution is governed *solely* by the error resolution procedures in Regulation E. For example:

• Credit inadvertently extended incident to an electronic fund transfer is governed solely by the Regulation E error resolution procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.

3. *Application to debit/credit transactions-examples.* If a consumer withdraws money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E provisions (such as timing and notice) for the entire transaction.

ii. The creditor need not provisionally credit the consumer's account, under §205.11(c)(2)(i) of Regulation E, for any portion of the unpaid extension of credit.

iii. The creditor must credit the consumer's account under §205.11(c) with any finance or other charges incurred as a result of the alleged error.

iv. The provisions of §226.13(d) and (g) apply only to the credit portion of the transaction.

References

*Statute:* Sections 161 and 162.

*Other sections:* Sections 226.6 through 226.8.

*Other regulations:* Regulation E (12 CFR 205).

*Previous regulation:* Sections 226.2(j) and (cc), and 226.14.

*1981 changes:* Section 226.13 reflects several substantive changes from the previous regulation and a complete restructuring of the error resolution provisions. The new organization, for example, arranges the creditor's responsibilities in chronological sequence.

Section 226.13(a)(7) implements amended §161(b) of the act, and provides that the creditor's failure to send a periodic statement to the consumer's current address is a billing error, unless the creditor received written notice of the address change fewer than 20 days (instead of 10 days) before the end of the billing cycle.

Several provisions regarding the creditor's duties after a billing error is alleged have been revised. The previous regulation immunized a creditor from liability for inadvertently taking collection action or making an adverse credit report within 2 days after receiving a billing error notice; these provisions are deleted from the revised regulation. The revised regulation no longer requires placement ''on the face'' of the periodic statment of the disclosure about payment of disputed amounts.

The revised regulation changes the rule in the previous regulation that a card issuer must prevent or restore an automatic debit of a disputed amount if it receives a billing error notice within 16 days after transmitting the periodic statement that reflects the alleged error. Under the revised regulation, the card issuer must prevent an automatic debit if it receives a billing error notice up to 3 days before the scheduled payment date (provided that the notice is received within the 60 days for the consumer to assert the error).

*Section 226.14—Determination of Annual Percentage Rate*

*14(a) General rule.*

1. *Tolerance.* The tolerance of ⅛ of 1 percentage point above or below the annual percentage rate applies to any required disclosure of the annual percentage rate. The disclosure of the annual percentage rate is required in §§226.6, 226.7, 226.9, 226.15, 226.16, and 226.26.

2. *Rounding.* The regulation does not require that the annual percentage rate be calculated to any particular number of decimal places; rounding is permissible within the ⅛ of 1 percent tolerance. For example, an exact annual percentage rate of 14.33333% may be stated as 14.33% or as 14.3%, or even as 14¼%; but it could not be stated as 14.2% or 14%, since each varies by more than the permitted tolerance.

3. *Periodic rates.* No explicit tolerance exists for any periodic rate as such; a disclosed periodic rate may vary from precise accuracy (for example, due to rounding) only to the extent that its annualized equivalent is within the tolerance permitted by §226.14(a). Further, a periodic rate need not be calculated to any particular number of decimal places.

4. *Finance charges.* The regulation does not prohibit creditors from assessing finance charges on balances that include prior, unpaid finance charges; state or other applicable law may do so, however.

5. *Good faith reliance on faulty calculation tools.* Footnote 31a absolves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the footnote is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

*14(b) Annual Percentage Rate for §§226.5a and 226.5b Disclosures, for Initial Disclosures and for Advertising Purposes*

1. *Corresponding annual percentage rate computation.* For purposes of §§226.5a, 226.5b, 226.6 and 226.16, the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year. This computation reflects the fact that, in such disclosures, the rate (known as the corresponding annual percentage rate) is prospective and does not involve any particular finance charge or periodic balance. This computation also is used to determine any annual percentage rate for oral disclosures under §226.26(a).

*14(c) Annual percentage rate for periodic statements.*

1. *General rule.* Section 226.14(c) requires disclosure of the corresponding annual percentage rate for each periodic rate (under §226.7(d)). It is figured by multiplying each periodic rate by the number of periods per year. This disclosure is like that provided on the initial disclosure statement. The periodic statement also must reflect (under §226.7(g)) the annualized equivalent of the rate actually applied during a particular cycle (the historical rate); this rate may differ from the corresponding annual percentage rate because of the inclusion of fixed, minimum, or transaction charges. Sections 226.14 (c)(1) through (c)(4) state the computation rules for the historical rate.

2. *Periodic rates.* Section 226.14(c)(1) applies if the only finance charge imposed is due to the application of a periodic rate to a balance. The creditor may compute the annual percentage rate either:

• By multiplying each periodic rate by the number of periods in the year; or

• By the "quotient" method. This method refers to a composite annual percentage rate when different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of 1½% on balances up to $500, and 1% on balances over $500. If, in a given cycle, the consumer has a balance of $800, the finance charge would consist of $7.50 (500×.015) plus $3.00 (300×.01), for a total finance charge of $10.50. The annual percentage rate for this period may be disclosed either as 18% on $500 and 12% on $300, or as 15.75% on a balance of $800 (the quotient of $10.50 divided by $800, multiplied by 12).

3. *Charges not based on periodic rates.* Section 226.14(c)(2) applies if the finance charge imposed includes a charge not due to the application of a periodic rate (other than a charge relating to a specific transaction). For example, if the creditor imposes a minimum $1 finance charge on all balances below $50, and the consumer's balance was $40 in a particular cycle, the creditor would disclose an annual percentage rate of 30% (1/40×12).

4. *No balance.* Footnote 32 to §226.14(c)(2) would apply not only when minimum charges are imposed on an account with no balance, but also to a plan in which a periodic rate is applied to advances from the date of the transaction. For example, if on May 19 the consumer pays the new balance in full from a statement dated May 1, and has no further transactions reflected on the June 1 statement, that statement would reflect a finance charge with no account balance.

5. *Transaction charges.* i. Section 226.14(c)(3) transaction charges include, for example:

A. A loan fee of $10 imposed on a particular advance.

B. A charge of 3% of the amount of each transaction.

ii. The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the "other amounts on which a finance charge was imposed" figure. In a multifeatured plan, creditors may consider each bona fide feature separately in the calculation of the denominator. A creditor has considerable flexibility in defining features for open-end plans, as long as the creditor has a reasonable basis for the distinctions. For further explanation and examples of how to determine the components of this formula, see appendix F.

6. *Daily rate with specific transaction charge.* Section 226.14(c)(3) sets forth an acceptable method for calculating the annual percentage rate if the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate. This section includes the requirement that the creditor follow the rules in appendix F in

calculating the annual percentage rate, especially footnote 1 to appendix F which addresses the daily rate/transaction charge situation by providing that the ''average of daily balances'' shall be used instead of the ''sum of the balances.''

7. *Charges related to opening, renewing, or continuing an account.* Footnote 33 is applicable to §226.14 (c)(2) and (c)(3). The charges involved here do not relate to a specific transaction or to specific activity on the account, but relate solely to the opening, renewing, or continuing of the account. For example, an annual fee to renew an open-end credit account that is a percentage of the credit limit on the account, or that is charged only to consumers that have not used their credit card for a certain dollar amount in transactions during the preceding year, would not be included in the calculation of the annual percentage rate, even though the fee may not be excluded from the finance charge under §226.4(c)(4). (See comment 4(c)(4)–2.) Inclusion of these charges in the annual percentage rate calculation results in significant distortions of the annual percentage rate and delivery of a possibly misleading disclosure to consumers. The rule in footnote 33 applies even if the loan fee, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

8. *Classification of charges.* If the finance charge includes a charge not due to the application of a periodic rate, the creditor must determine the proper annual percentage rate computation method according to the type of charge imposed. If the charge is tied to a specific transaction (for example, 3% of the amount of each transaction), then the method in §226.14(c)(3) must be used. If a fixed or minimum charge is applied, that is, one not tied to any specific transaction, then the formula in §226.14(c)(2) is appropriate.

9. *Small finance charges.* Section 226.14(c)(4) gives the creditor an alternative to §226.14(c)(2) and (c)(3) if small finance charges (50 cents or less) are involved; that is, if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents. For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an annual percentage rate of 30 percent under the rule in §226.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1½ percent per month. This option is consistent with the provision in footnote 11 to §§226.6 and 226.7 permitting the creditor to disregard the effect of minimum charges in disclosing the ranges of balances to which periodic rates apply.

10. *Prior-cycle adjustments.* i. The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

A. If a finance charge imposed in the current billing cycle is attributable to periodic rates applicable to prior billing cycles (such as when a deferred payment balance was not paid in full by the payment due date and finance charges from the date of purchase are now being debited to the account, or when a cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges and it is impracticable to post the transaction until the following cycle), and the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. At the creditor's option, balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, if it was impracticable to post the transaction in the previous cycle because of timing, or if the adjustment is covered by comment 14(c)10.ii.B.

B. If a finance charge that is posted to the account relates to activity for which a finance charge was debited or credited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons), the creditor shall at its option:

1. Calculate the annual percentage rate in accord with ii.A. of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

*14(d) Calculations where daily periodic rate applied.*

1. *Quotient Method.* Section 226.14(d) addresses use of a daily periodic rate(s) to determine some or all of the finance charge and use of the quotient method to determine the annual percentage rate. Since the quotient formula in §226.14(c)(1)(ii) does not work when a daily rate is being applied to a series of daily balances, §226.14(d) gives the creditor 2 alternative ways to figure the annual percentage rate—either of which satisfies the requirement in §226.7(g).

2. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)–6 for guidance on an appropriate calculation method.

References

*Statute:* Section 107.

*Other sections:* Sections 226.6, 226.7, 226.9, 226.15, 226.16, and 226.26.

*Previous regulation:* Section 226.5(a) and Interpretation §§226.501 and 226.506.

*1981 changes:* Section 226.14 reflects the statutory amendment permitting a ⅛ of 1 percent tolerance for annual percentage rates. The revised regulation no longer reflects the provision dealing with finance charges imposed on specified ranges or brackets of balances. The revised regulation includes a footnote providing that loan fees, points, or similar charges unrelated to any specific transaction are not figured into the annual percentage rate computation.

*Section 226.15—Right of Rescission*

1. *Transactions not covered.* Credit extensions that are not subject to the regulation are not covered by §226.15 even if the customer's principal dwelling is the collateral securing the credit. For this purpose, *credit extensions* also would include the occurrences listed in Comment 15(a)(1)–1. For example, the right of rescission does not apply to the opening of a business-purpose credit line, even though the loan is secured by the customer's principal dwelling.

*15(a) Consumer's right to rescind.*

*Paragraph 15(a)(1).*

1. *Occurrences subject to right.* Under an open-end credit plan secured by the consumer's principal dwelling, the right of rescission generally arises with each of the following occurrences:

- Opening the account.
- Each credit extension.
- Increasing the credit limit.
- Adding to an existing account a security interest in the consumer's principal dwelling.
- Increasing the dollar amount of the security interest taken in the dwelling to secure the plan. For example, a consumer may open an account with a $10,000 credit limit, $5,000 of which is initially secured by the consumer's principal dwelling. The consumer has the right to rescind at that time and (except as noted in §226.15(a)(1)(ii)) with each extension on the account. Later, if the creditor decides that it wants the credit line fully secured, and increases the amount of its interest in the consumer's dwelling, the consumer has the right to rescind the increase.

2. *Exceptions.* Although the consumer generally has the right to rescind with each transaction on the account, section 125(e) of the Act provides an exception: the creditor need not provide the right to rescind at the time of each credit extension made under an open-end credit plan secured by the consumer's principal dwelling to the extent that the credit extended is in accordance with a previously established credit limit for the plan. This limited rescission option is available whether or not the plan existed prior to the effective date of the Act.

3. *Security interest arising from transaction.* In order for the right of rescission to apply, the security interest must be retained as part of the credit transaction. For example:

- A security interest that is acquired by a contractor who is also extending the credit in the transaction.
- A mechanic's or materialman's lien that is retained by a subcontractor or supplier of a contractor-creditor, even when the latter has waived its own security interest in the consumer's home.

The security interest is not part of the credit transaction, and therefore the transaction is not subject to the right of rescission when, for example:

- A mechanic's or materialman's lien is obtained by a contractor who is not a party to the credit transaction but merely is paid with the proceeds of the consumer's cash advance.
- All security interests that may arise in connection with the credit transaction are validly waived.
- The creditor obtains a lien and completion bond that in effect satisfies all liens against the consumer's principal dwelling as a result of the credit transaction.

Although liens arising by operation of law are not considered security interests for purposes of disclosure under §226.2, that section specifically includes them in the definition for purposes of the right of rescission. Thus, even though an interest in the consumer's principal dwelling is not a required disclosure under §226.6(c), it may still give rise to the right of rescission.

4. *Consumer.* To be a consumer within the meaning of §226.2, that person must at least have an ownership interest in the dwelling that is encumbered by the creditor's security interest, although that person need not be a

signatory to the credit agreement. For example, if only one spouse enters into a secured plan, the other spouse is a consumer if the ownership interest of that spouse is subject to the security interest.

5. *Principal dwelling.* A consumer can only have one principal dwelling at a time. (But see comment 15(a)(1)–6.) A vacation or other second home would not be a principal dwelling. A transaction secured by a second home (such as a vacation home) that is not currently being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling if it secures the open-end credit line. In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, an advance on an open-end line to finance B and secured by B is a residential mortgage transaction. Dwelling, as defined in §226.2, includes structures that are classified as personalty under state law. For example, a transaction secured by a mobile home, trailer, or houseboat used as the consumer's principal dwelling may be rescindable.

6. *Special rule for principal dwelling.* Notwithstanding the general rule that consumers may have only one principal dwelling, when the consumer is acquiring or constructing a new principal dwelling, a credit plan or extension that is subject to Regulation Z and is secured by the equity in the consumer's current principal dwelling is subject to the right of rescission regardless of the purpose of that loan (for example, an advance to be used as a bridge loan). For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a loan to finance B and secured by A is subject to the right of rescission. Moreover, a loan secured by both A and B is, likewise, rescindable.

*Paragraph 15(a)(2).*

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under §226.15(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under §226.15(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under §226.15(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivery of the notification to the person or address to which the consumer has been directed to send payments constitutes delivery to the creditor or assignee. State law determines whether delivery of the notification to a third party other than the person to whom payments are made is delivery to the creditor or assignee, in the case where the creditor fails to designate an address for sending the notification of rescission.

*Paragraph 15 (a)(3).*

1. *Rescission period.* the period within which the consumer may exercise the right to rescind runs for 3 business days from the last of 3 events:

- The occurrence that gives rise to the right of rescission.
- Delivery of *all* material disclosures that are relevant to the plan.
- Delivery to the consumer of the required rescission notice.

For example, an account is opened on Friday, June 1, and the disclosures and notice of the right to rescind were given on Thursday, May 31; the rescission period will expire at midnight of the third business day after June 1—that is, Tuesday June 5. In another example, if the disclosures are given and the account is opened on Friday, June 1, and the rescission notice is given on Monday, June 4, the rescission period expires at midnight of the third business day after June 4—that is Thursday, June 7. The consumer must place the rescission notice in the mail, file it for telegraphic transmission, or deliver it to the creditor's place of business within that period in order to exercise the right.

2. *Material disclosures.* Footnote 36 sets forth the material disclosures that must be provided before the rescission period can begin to run. The creditor must provide sufficient information to satisfy the requirements of §226.6 for these disclosures. A creditor may satisfy this requirement by giving an initial disclosure statement that complies with the regulation. Failure to give the other required initial disclosures (such as the billing rights statement) or the information required under section 226.5b. does not prevent the running of the rescission period, although that failure may result in civil liability or administrative sanctions. The payment terms set forth in footnote 36 apply to any repayment phase set forth in the agreement. Thus, the payment terms described in §226.6(e)(2) for any repayment phase as well as for the draw period are ''material disclosures.''

3. *Material disclosures—variable rate program.* For a variable rate program, the material disclosures also include the disclosures listed in footnote 12 to §226.6(a)(2): the circumstances under which the rate may increase; the limitations on the increase; and

the effect of an increase. The disclosures listed in footnote 12 to section 226.6(a)(2) for any repayment phase also are material disclosures for variable-rate programs.

4. *Unexpired right of rescission.* When the creditor has failed to take the action necessary to start the three-day rescission period running the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

• The expiration of three years after the occurrence giving rise to the right of rescission.

• Transfer of all the consumer's interest in the property.

• Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract.

Transfer of all the consumer's interest includes such transfers as bequests and gifts. A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of §226.15. A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.

*Paragraph 15(a)(4).*

1. *Joint owners.* When more than one consumer has the right to rescind a transaction, any one of them may exercise that right and cancel the transaction on behalf of all. For example, if both a husband and wife have the right to rescind a transaction, either spouse acting alone may exercise the right and both are bound by the rescission.

*15(b) Notice of right to rescind.*

1. *Who receives notice.* Each consumer entitled to rescind must be given:

• Two copies of the rescission notice.

• The material disclosures.

In a transaction involving joint owners, both of the whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive 2 copies of the rescission notice and one copy of the disclosures. If e-mail is used, the creditor complies with §226.15(b)(1) if one notice is sent to each co-owner. Each co-owner must consent to receive electronic disclosures and each must designate an electronic address for receiving the disclosure.

2. *Format.* The rescission notice may be physically separated from the material disclosures or combined with the material disclosures, so long as the information required to be included on the notice is set forth in a clear and conspicuous manner. See the model notices in appendix G.

3. *Content.* The notice must include all of the information outlined in §226.15(b)(1) through (5). The requirement in §226.15(b) that the transaction or occurrence be identified may be met by providing the date of the transaction or occurrence. The notice may include additional information related to the required information, such as:

• A description of the property subject to the security interest.

• A statement that joint owners may have the right to rescind and that a rescission by one is effective for all.

• The name and address of an agent of the creditor to receive notice of rescission.

4. *Time of providing notice.* The notice required by §226.15(b) need not be given before the occurrence giving rise to the right of rescission. The creditor may deliver the notice after the occurrence, but the rescission period will not begin to run until the notice is given. For example, if the creditor provides the notice on May 15, but disclosures were given and the credit limit was raised on May 10, the 3-business-day rescission period will run from May 15.

*15(c) Delay of creditor's performance.*

1. *General rule.* Until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party:

• Disburse advances to the consumer.

• Begin performing services for the consumer.

• Deliver materials to the consumer.

A creditor may, however, continue to allow transactions under an existing open-end credit plan during a rescission period that results solely from the addition of a security interest in the consumer's principal dwelling. (See comment 15(c)–3 for other actions that may be taken during the delay period.)

2. *Escrow.* The creditor may disburse advances during the rescission period in a valid escrow arrangement. The creditor may not, however, appoint the consumer as "trustee" or "escrow agent" and distribute funds to the consumer in that capacity during the delay period.

3. *Actions during the delay period.* Section 226.15(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. Unless otherwise prohibited, such as by state law, the creditor may, for example:

• Prepare the cash advance check.

• Perfect the security interest.

• Accrue finance charges during the delay period.

4. *Performance by third party.* The creditor is relieved from liability for failure to delay

performance if a third party with no knowledge that the rescission right has been activated provides materials or services, as long as any debt incurred for materials or services obtained by the consumer during the rescission period is not secured by the security interest in the consumer's dwelling. For example, if a consumer uses a bank credit card to purchase materials from a merchant in an amount below the floor limit, the merchant might not contact the card issuer for authorization and therefore would not know that materials should not be provided.

5. *Delay beyond rescission period.* The creditor must wait until it is reasonably satisfied that the consumer has not rescinded. For example, the creditor may satisfy itself by doing one of the following:

• Waiting a reasonable time after expiration of the rescission period to allow for delivery of a mailed notice.

• Obtaining a written statement from the consumer that the right has not been exercised.

When more than one consumer has the right to rescind, the creditor cannot reasonably rely on the assurance of only one consumer, because other consumers may exercise the right.

*15(d) Effects of rescission.*

*Paragraph 15(d)(1).*

1. *Termination of security interest.* Any security interest giving rise to the right of rescission becomes void when the consumer exercises the right of rescission. The security interest is automatically negated, regardless of its status and whether or not it was recorded or perfected. Under §226.15(d)(2), however, the creditor must take any action necessary to reflect the fact that the security interest no longer exists.

2. *Extent of termination.* The creditor's security interest is void to the extent that it is related to the occurrence giving rise to the right of rescission. For example, upon rescission:

• If the consumer's right to rescind is activated by the opening of a plan, any security interest in the principal dwelling is void.

• If the right arises due to an increase in the credit limit, the security interest is void as to the amount of credit extensions over the prior limit, but the security interest in amounts up to the original credit limit is unaffected.

• If the right arises with each individual credit extension, then the interest is void as to that extension, and other extensions are unaffected.

*Paragraph 15(d)(2).*

1. *Refunds to consumer.* The consumer cannot be required to pay any amount in the form of money or property either to the creditor or to a third party as part of the occurrence subject to the right of rescission. Any amounts of this nature already paid by the consumer must be refunded. ''Any amount'' includes finance charges already accrued, as well as other charges such as broker fees, application and commitment fees, or fees for a title search or appraisal, whether paid to the creditor, paid by the consumer directly to a third party, or passed on from the creditor to the third party. It is irrelevant that these amounts may not represent profit to the creditor. For example:

• If the occurrence is the opening of the plan, the creditor must return any membership or application fee paid.

• If the occurrence is the increase in a credit limit or the addition of a security interest, the creditor must return any fee imposed for a new credit report or filing fees.

• If the occurrence is a credit extension, the creditors must return fees such as application, title, and appraisal or survey fees, as well as any finance charges related to the credit extension.

2. *Amounts not refundable to consumer.* Creditors need not return any money given by the consumer to a third party outside of the occurrence, such as costs incurred for a building permit or for a zoning variance. Similarly, the term *any amount* does not apply to money or property given by the creditor to the consumer; those amounts must be tendered by the consumer to the creditor under §226.15(d)(3).

3. *Reflection of security interest termination.* The creditor must take whatever steps are necessary to indicate that the security interest is terminated. Those steps include the cancellation of documents creating the security interest, and the filing of release or termination statements in the public record. In a transaction involving subcontractors or suppliers that also hold security interests related to the occurrence rescinded by the consumer, the creditor must insure that the termination of their security interests is also reflected. The 20-day period for the creditor's action refers to the time within which the creditor must begin the process. It does not require all necessary steps to have been completed within that time, but the creditor is responsible for seeing the process through to completion.

*Paragraph 15(d)(3).*

1. *Property exchange.* Once the creditor has fulfilled its obligation under §226.15(d)(2), the consumer must tender to the creditor any property or money the creditor has already delivered to the consumer. At the consumer's option, property may be tendered at the location of the property. For example, if fixtures or furniture have been delivered to the consumer's home, the consumer may tender them to the creditor by making them available for pick-up at the home, rather than physically returning them to the creditor's premises. Money already given to the consumer *must* be tendered at the creditor's

place of business. For purpose of property exchange, the following additional rules apply:

- A cash advance is considered money for purposes of this section even if the creditor knows what the consumer intends to purchase with the money.
- In a 3-party open-end credit plan (that is, if the creditor and seller are not the same or related persons), extensions by the creditor that are used by the consumer for purchases from third-party sellers are considered to be the same as cash advances for purposes of tendering value to the creditor, even though the transaction is a purchase for other purposes under the regulation. For example, if a consumer exercises the unexpired right to rescind after using a 3-party credit card for one year, the consumer would tender the amount of the purchase price for the items charged to the account, rather than tendering the items themselves to the creditor.

2. *Reasonable value.* If returning the property would be extremely burdensome to the consumer, the consumer may offer the creditor its reasonable value rather than returning the property itself. For example, if building materials have already been incorporated into the consumer's dwelling, the consumer may pay their reasonable value.

*Paragraph 15(d)(4).*

1. *Modifications.* The procedures outlined in §226.15(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The sequence of procedures under §226.15(d)(2) and (3), or a court's modification of those procedures under §226.15(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.

*15(e) Consumer's waiver of right to rescind.*

1. *Need for waiver.* To waive the right to rescind, the consumer must have a bona fide personal financial emergency that must be met before the end of the rescission period. The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission.

2. *Procedure.* To waive or modify the right to rescind, the consumer must give a written statement that specifically waives or modifies the right, and also includes a brief description of the emergency. Each consumer entitled to rescind must sign the waiver statement. In a transaction involving multiple consumers, such as a husband and wife using their home as collateral, the waiver must bear the signatures of both spouses.

*15(f) Exempt transactions.*

1. *Residential mortgage transaction.* Although residential mortgage transactions would seldom be made on bona fide open-end credit plans (under which repeated transactions must be reasonably contemplated), an advance on an open-end plan could be for a downpayment for the purchase of a dwelling that would then secure the remainder of the line. In such a case, only the particular advance for the downpayment would be exempt from the rescission right.

2. *State creditors.* Cities and other political subdivisions of states acting as creditors are not exempt from §226.15.

3. *Spreader clause.* When the creditor holds a mortgage or deed of trust on the consumer's principal dwelling and that mortgage or deed of trust contains a "spreader clause" (also known as a "dragnet" or cross-collateralization clause), subsequent occurrences such as the opening of a plan or individual credit extensions are subject to the right of rescission to the same degree as if the security interest were taken directly to secure the open-end plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.

References

*Statute:* Sections 113, 125, 130, and the Housing and Community Development Technical Amendments Act of 1984, Sec. 205 (Pub. L. 98–479).

*Other sections:* Section 226.2 and appendix G.

*Previous regulation:* Section 226.9.

*1981 Changes:* Section 226.15 reflects the statutory amendments of 1980, providing for a limited right of rescission when individual credit extensions are made in accordance with a previously established credit limit for an open-end credit plan. The 1980 amendments provided that this limited rescission right be available for a three-year trial period. However, Pub. L. 98–479 now permanently exempts such individual credit extensions from the right of rescission.

The right to rescind applies not only to real property used as the consumer's principal dwelling, but to personal property as well. The regulation provides no specific text or format for the rescission notice.

When a consumer exercises the right to rescind, the creditor now has 20 days to return a consumer's money or property and take the necessary action to terminate the security interest. The creditor has 20 days to take possession of the money or property after the consumer's tender before the consumer may keep it without further obligation.

Under the revised regulation, the waiver provision has been relaxed. The lien status of the mortgage is irrelevant for purposes of the residential mortgage transaction exemption. The exemption for agricultural loans from the right to rescind has been deleted.

*Section 226.16—Advertising*

1. *Clear and conspicuous standard.* Section 226.16 is subject to the general ''clear and conspicuous'' standard for subpart B (see §226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.

2. *Expressing the annual percentage rate in abbreviated form.* Whenever the annual percentage rate is used in an advertisement for open-end credit, it may be expressed using a readily understandable abbreviation such as ''APR''.

*16(a) Actually available terms.*

1. *General rule.* To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. Section 226.16(a) is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.

2. *Specific credit terms. Specific credit terms* is not limited to the disclosures required by the regulation but would include any specific components of a credit plan, such as the minimum periodic payment amount or seller's points in a plan secured by real estate.

*16(b) Advertisement of terms that require additional disclosures.*

1. *Terms requiring additional disclosures.* In §226.16(b) the phrase *the terms required to be disclosed under §226.6* refers to the terms in §226.6(a) and §226.6(b).

2. *Use of positive terms.* An advertisement must state a credit term as a positive number in order to trigger additional disclosures. For example, *no annual membership fee* would not trigger the additional disclosures required by §226.16(b). (See, however, the rules in §226.16(d) relating to advertisements for home equity plans.)

3. *Implicit terms.* Section 226.16(b) applies even if the triggering term is not stated explicitly, but may be readily determined from the advertisement.

4. *Membership fees.* A membership fee is not a triggering term nor need it be disclosed under §226.16(b)(3) if it is required for participation in the plan whether or not an open-end credit feature is attached. (See Comment 6(b)–1.)

5. *Variable-rate plans.* In disclosing the annual percentage rate in an advertisement for a variable-rate plan, as required by §226.16(b)(2), the creditor may use an insert showing the current rate; may give the rate as of a specified recent date; or may disclose an estimated rate under §226.5(c). The additional requirement in §226.16(b)(2) to disclose the variable-rate feature may be satisfied by disclosing that *the annual percentage rate may vary* or a similar statement, but the advertisement need not include the information required by footnote 12 to §226.6(a)(2).

6. *Discounted variable-rate plans—disclosure of the annual percentage rates.* The advertised annual percentage rates for discounted variable-rate plans must, in accordance with comment 6(a)(2)–10, include both the initial rate (with the statement of how long it will remain in effect) and the current indexed rate (with the statement that this second rate may vary). The options listed in comment I6(b)–5 may be used in disclosing the current indexed rate.

7. *Triggering terms.* The following are examples of terms that trigger additional disclosures:

- *Small monthly service charge on the remaining balance, which describes how the amount of a finance charge will be determined.*
- *12 percent Annual Percentage Rate* or *A $15 annual membership fee buys you $2,000 in credit,* which describe required disclosures using positive numbers.

8. *Minimum, fixed, transaction, activity, or similar charge.* The charges to be disclosed under §226.16(b)(1) are those that are considered finance charges under §226.4.

9. *Deferred billing and deferred payment programs.* Statements such as ''Charge it—you won't be billed until May'' or ''You may skip your January payment'' are not in themselves triggering terms, since the timing for initial billing or for monthly payments are not terms required to be disclosed under §226.6. However, a statement such as ''No finance charge until May'' or any other statement regarding when finance charges begin to accrue is a triggering term, whether appearing alone or in conjunction with a description of a deferred billing or deferred payment program such as the examples above.

*16(c) Catalogs or Other Multiple-page Advertisements; Electronic Advertisements*

1. *Definition.* The multiple-page advertisements to which §226.16(c) refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of §226.16(c).

*Paragraph 16(c)(1).*

1. *General.* Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog or other multiple-

page advertisement or an electronic advertisement. The rule applies only if the advertisement contains one or more of the triggering terms from § 226.16(b).

2. *Electronic communication.* If an advertisement using electronic communication contains the table or schedule permitted under § 226.16(c)(1), any statement of terms set forth in § 226.6 appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.

*Paragraph 16(c)(2).*

1. *Table or schedule if credit terms depend on outstanding balance.* If the credit terms of a plan vary depending on the amount of the balance outstanding, rather than the amount of any property purchased, a table or schedule complies with § 226.16(c)(2) if it includes the required disclosures for representative balances. For example, a creditor would disclose that a periodic rate of 1.5% is applied to balances of $500 or less, and a 1% rate is applied to balances greater than $500.

*16(d) Additional Requirements for Home Equity Plans*

1. *Trigger terms.* Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states *no annual fee, no points,* or *we waive closing costs* in an advertisement, additional information must be provided. (See comment 16(d)–4 regarding the use of a phrase such as *no closing costs.*) Inclusion of a statement such as *low fees,* however, would not trigger the need to state additional information. References to payment terms include references to the draw period or any repayment period, to the length of the plan, to how the minimum payments are determined and to the timing of such payments.

2. *Fees to open the plan.* Section 226.16(d)(1)(i) requires a disclosure of any fees imposed by the creditor or a third party to open the plan. In providing the fee information required under this paragraph, the corresponding rules for disclosure of this information apply. For example, fees to open the plan may be stated as a range. Similarly, if property insurance is required to open the plan, a creditor either may estimate the cost of the insurance or provide a statement that such insurance is required. (See the commentary to § 226.5b(d)(7) and (8).)

3. *Statements of tax deductibility.* An advertisement referring to deductibility for tax purposes is not misleading if it includes a statement such as ''consult a tax advisor regarding the deductibility of interest.''

4. *Misleading terms prohibited.* Under § 226.16(d)(5), advertisements may not refer to home equity plans as *free money* or use other misleading terms. For example, an advertisement could not state ''no closing costs'' or ''we waive closing costs'' if consumers may be required to pay any closing costs, such as recordation fees. In the case of property insurance, however, a creditor may state, for example, ''no closing costs'' even if property insurance may be required, as long as the creditor also provides a statement that such insurance may be required. (See the commentary to this section regarding fees to open a plan.)

5. *Relation to other sections.* Advertisements for home equity plans must comply with all provisions in § 226.16, not solely the rules in § 226.16(d). If an advertisement contains information (such as the payment terms) that triggers the duty under § 226.16(d) to state the annual percentage rate, the additional disclosures in § 226.16(b) must be provided in the advertisement. While § 226.16(d) does not require a statement of fees to use or maintain the plan (such as membership fees and transaction charges), such fees must be disclosed under § 226.16(b) (1) and (3).

6. *Inapplicability of closed-end rules.* Advertisements for home equity plans are governed solely by the requirements in § 226.16, and not by the closed-end advertising rules in § 226.24. Thus, if a creditor states payment information about the repayment phase, this will trigger the duty to provide additional information under § 226.16, but not under § 226.24.

7. *Balloon payment.* In some programs, a balloon payment will occur if only the minimum payments under the plan are made. If an advertisement for such a program contains any statement about a minimum periodic payment, the advertisement must also state that a balloon payment will result (not merely that a balloon payment ''may'' result). (See comment 5b(d)(5)(ii)–3 for guidance on items not required to be stated in the advertisement, and on situations in which the balloon payment requirement does not apply.)

References

*Statute:* Sections 141 and 143.

*Previous regulation:* Section 226.10 (a) through (c) and Interpretation § 226.1002.

*Other sections:* Sections 226.2 and 226.6.

*1981 changes:* Section 226.16 reflects the statutory changes to section 143 of the act which reduce both the number of triggering terms and the additional disclosures required by the use of those terms. Membership or participation fees are included among the additional disclosures required when a triggering term is used. The substance of Interpretation § 226.1002, requiring disclosure of representative amounts of credit in catalogs and multiple-page advertisements, has been incorporated in simplified form in paragraph (c).

SUBPART C—CLOSED-END CREDIT

*Section 226.17—General Disclosure Requirements*

*17(a) Form of disclosures.*

*Paragraph 17(a)(1).*

1. *Clear and conspicuous.* This standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. In addition, although no minimum type size is mandated, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

2. *Segregation of disclosures.* The disclosures may be grouped together and segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of paper or may be set off from other information on the contract or other documents:

- By outlining them in a box
- By bold print dividing lines
- By a different color background
- By a different type style

(The general segregation requirement described in this subparagraph does not apply to the disclosures required under §§226.19(b) and 226.20(c) although the disclosures must be clear and conspicuous.)

3. *Location.* The regulation imposes no specific location requirements on the segregated disclosures. For example:

- They may appear on a disclosure statement separate from all other material.
- They may be placed on the same document with the credit contract or other information, so long as they are segregated from that information.
- They may be shown on the front or back of a document.
- They need not begin at the top of a page.
- They may be continued from one page to another.

4. *Content of segregated disclosures.* Footnotes 37 and 38 contain exceptions to the requirement that the disclosures under §226.18 be segregated from material that is not directly related to those disclosures. Footnote 37 lists the items that may be added to the segregated disclosures, even though not directly related to those disclosures. Footnote 38 lists the items required under §226.18 that may be deleted from the segregated disclosures and appear elsewhere. Any one or more of these additions or deletions may be combined and appear either together with or separate from the segregated disclosures. The itemization of the amount financed under §226.18(c), however, must be separate from the other segregated disclosures under §226.18. If a creditor chooses to include the security interest charges required to be itemized under §226.4(e) and §226.18(o) in the amount financed itemization, it need not list these charges elsewhere.

5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. The following is directly related information:

i. A description of a grace period after which a late payment charge will be imposed. For example, the disclosure given under §226.18(l) may state that a late charge will apply to "any payment received more than 15 days after the due date."

ii. A statement that the transaction is not secured. For example, the creditor may add a category labelled "unsecured" or "not secured" to the security interest disclosures given under §226.18(m).

iii. The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that event will occur at a certain time.

iv. The conditions under which a demand feature may be exercised. For example, in a loan subject to demand after five years, the disclosures may state that the loan will become payable on demand in five years.

v. An explanation of the use of pronouns or other references to the parties to the transaction. For example, the disclosures may state, "'You' refers to the customer and 'we' refers to the creditor."

vi. Instructions to the creditor or its employees on the use of a multiple-purpose form. For example, the disclosures may state, "Check box if applicable."

vii. A statement that the borrower may pay a minimum finance charge upon prepayment in a simple-interest transaction. For example, when state law prohibits penalties, but would allow a minimum finance charge in the event of prepayment, the creditor may make the §226.18(k)(1) disclosure by stating, "You may be charged a minimum finance charge."

viii. A brief reference to negative amortization in variable-rate transactions. For example, in the variable-rate disclosure, the creditor may include a short statement such as "Unpaid interest will be added to principal." (See the commentary to §226.18(f)(1)(iii).)

ix. A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as "Federal Truth in Lending Disclosures" or a descriptive title such as "Real Estate Loan Disclosures."

x. A statement that a due-on-sale clause or other conditions on assumption are contained in the loan document. For example, the disclosure given under §226.18(q) may state, "Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms.''

xi. If a state or Federal law prohibits prepayment penalties and excludes the charging of interest after prepayment from coverage as a penalty, a statement that the borrower may have to pay interest for some period after prepayment in full. The disclosure given under §226.18(k) may state, for example, ''If you prepay your loan on other than the regular installment date, you may be assessed interest charges until the end of the month.''

xii. More than one hypothetical example under §226.18(f)(1)(iv) in transactions with more than one variable-rate feature. For example, in a variable-rate transaction with an option permitting consumers to convert to a fixed-rate transaction, the disclosures may include an example illustrating the effects on the payment terms of an increase resulting from conversion in addition to the example illustrating an increase resulting from changes in the index.

xiii. The disclosures set forth under §226.18(f)(1) for variable-rate transactions subject to §226.18(f)(2).

xiv. A statement whether or not a subsequent purchaser of the property securing an obligation may be permitted to assume the remaining obligation on its original terms.

xv. A late-payment fee disclosure under §226.18(l) on a single payment loan.

6. *Multiple-purpose forms.* The creditor may design a disclosure statement that can be used for more than one type of transaction, so long as the required disclosures for individual transactions are clear and conspicuous. (See the Commentary to appendices G and H for a discussion of the treatment of disclosures that do not apply to specific transactions.) Any disclosure listed in §226.18 (except the itemization of the amount financed under §226.18(c)) may be included on a standard disclosure statement even though not all of the creditor's transactions include those features. For example, the statement may include:

- The variable rate disclosure under §226.18(f).
- The demand feature disclosure under §226.18(i).
- A reference to the possibility of a security interest arising from a spreader clause, under §226.18(m).
- The assumption policy disclosure under §226.18(q).
- The required deposit disclosure under §226.18(r).

7. *Balloon payment financing with leasing characteristics.* In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the course of the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M, but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens and benefits of ownership upon consummation. These transactions are governed by the disclosure requirements of this regulation instead of Regulation M. Creditors should not include in the segregated Truth in Lending disclosures additional information. Thus, disclosures should show the large final payment in the payment schedule and should not, for example, reflect the other options available to the consumer at maturity.

*Paragraph 17(a)(2).*

1. *When disclosures must be more conspicuous.* The following rules apply to the requirement that the terms *annual percentage rate* and *finance charge* be shown more conspicuously:

- The terms must be more conspicuous only in relation to the other required disclosures under §226.18. For example, when the disclosures are included on the contract document, those 2 terms need not be more conspicuous as compared to the heading on the contract document or information required by state law.
- The terms need not be more conspicuous except as part of the finance charge and annual percentage rate disclosures under §226.18 (d) and (e), although they may, at the creditor's option, be highlighted wherever used in the required disclosures. For example, the terms may, but need not, be highlighted when used in disclosing a prepayment penalty under §226.18(k) or a required deposit under §226.18(r).
- The creditor's identity under §226.18(a) may, but need not, be more prominently displayed than the finance charge and annual percentage rate.
- The terms need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs)

2. *Making disclosures more conspicuous.* The terms *finance charge* and *annual percentage rate* may be made more conspicuous in any way that highlights them in relation to the other required disclosures. For example, they may be:

- Capitalized when other disclosures are printed in capital and lower case.
- Printed in larger type, bold print or different type face.
- Printed in a contrasting color.
- Underlined.

• Set off with asterisks.

*17(b) Time of disclosures.*

1. *Consummation.* As a general rule, disclosures must be made before ''consummation'' of the transaction. The disclosures need not be given by any particular time before consummation, except in certain mortgage transactions and variable-rate transactions secured by the consumer's principal dwelling with a term greater than one year under §226.19. (See the commentary to §226.2(a)(13) regarding the definition of consummation.)

2. *Converting open-end to closed-end credit.* Except for home equity plans subject to §226.5b in which the agreement provides for a repayment phase, if an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction. (See the commentary to §226.19(b) for the timing rules for additional disclosures required upon the conversion to a variable-rate transaction secured by a consumer's principal dwelling with a term greater than one year.) If consummation of the closed-end transaction occurs at the same time as the consumer enters into the open-end agreement, the closed-end credit disclosures may be given at the time of conversion. If disclosures are delayed until conversion and the closed-end transaction has a variable-rate feature, disclosures should be based on the rate in effect at the time of conversion. (See the commentary to §226.5 regarding conversion of closed-end to open-end credit.)

3. *Disclosures provided on credit contracts.* Creditors must give the required disclosures to the consumer in writing, in a form that the consumer may keep, before consummation of the transaction. *See* §226.17(a)(1) and (b). Sometimes the disclosures are placed on the same document with the credit contract. Creditors are not required to give the consumer two separate copies of the document before consummation, one for the consumer to keep and a second copy for the consumer to execute. The disclosure requirement is satisfied if the creditor gives a copy of the document containing the unexecuted credit contract and disclosures to the consumer to read and sign; and the consumer receives a copy to keep at the time the consumer becomes obligated. It is not sufficient for the creditor merely to show the consumer the document containing the disclosures before the consumer signs and becomes obligated. The consumer must be free to take possession of and review the document in its entirety before signing.

i. *Example.* To illustrate:

A. A creditor gives a consumer a multiple-copy form containing a credit agreement and TILA disclosures. The consumer reviews and signs the form and returns it to the creditor, who separates the copies and gives one copy to the consumer to keep. The creditor has satisfied the disclosure requirement.

*17(c) Basis of disclosures and use of estimates.*

*Paragraph 17(c)(1).*

1. *Legal obligation.* The disclosures shall reflect the credit terms to which the parties are legally bound as of the outset of the transaction. In the case of disclosures required under §226.20(c), the disclosures shall reflect the credit terms to which the parties are legally bound when the disclosures are provided. The legal obligation is determined by applicable state law or other law. (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buydown transactions elsewhere in the commentary to §226.17(c).)

• The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

2. *Modification of obligation.* The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement. But this presumption is rebutted if another agreement between the parties legally modifies that note or contract. If the parties informally agree to a modification of the legal obligation, the modification should not be reflected in the disclosures unless it rises to the level of a change in the terms of the legal obligation. For example:

• If the creditor offers a preferential rate, such as an employee preferred rate, the disclosures should reflect the terms of the legal obligation. (See the commentary to §226.19(b) for an example of a preferred-rate transaction that is a variable-rate transaction.)

• If the contract provides for a certain monthly payment schedule but payments are made on a voluntary payroll deduction plan or an informal principal-reduction agreement, the disclosures should reflect the schedule in the contract.

• If the contract provides for regular monthly payments but the creditor informally permits the consumer to defer payments from time to time, for instance, to take account of holiday seasons or seasonal employment, the disclosures should reflect the regular monthly payments.

3. *Third-party buydowns.* In certain transactions, a seller or other third party may pay an amount, either to the creditor or to the consumer, in order to reduce the consumer's payments or buy down the interest rate for all or a portion of the credit term. For example, a consumer and a bank agree to a mortgage with an interest rate of 15% and level payments over 25 years. By a separate agreement, the seller of the property agrees to subsidize the consumer's payments

for the first 2 years of the mortgage, giving the consumer an effective rate of 12% for that period.

• If the lower rate is reflected in the credit contract between the consumer and the bank, the disclosures must take the buydown into account. For example, the annual percentage rate must be a composite rate that takes account of both the lower initial rate and the higher subsequent rate, and the payment schedule disclosures must reflect the 2 payment levels. However, the amount paid by the seller would not be specifically reflected in the disclosures given by the bank, since that amount constitutes seller's points and thus is not part of the finance charge.

• If the lower rate is not reflected in the credit contract between the consumer and the bank and the consumer is legally bound to the 15% rate from the outset, the disclosures given by the bank must not reflect the seller buydown in any way. For example, the annual percentage rate and payment schedule would not take into account the reduction in the interest rate and payment level for the first 2 years resulting from the buydown.

4. *Consumer buydowns.* In certain transactions, the consumer may pay an amount to the creditor to reduce the payments or obtain a lower interest rate on the transaction. Consumer buydowns must be reflected in the disclosures given for that transaction. To illustrate, in a mortgage transaction, the creditor and consumer agree to a note specifying a 14 percent interest rate. However, in a separate document, the consumer agrees to pay an amount to the creditor at consummation in return for a reduction in the interest rate to 12 percent for a portion of the mortgage term. The amount paid by the consumer may be deposited in an escrow account or may be retained by the creditor. Depending upon the buydown plan, the consumer's prepayment of the obligation may or may not result in a portion of the amount being credited or refunded to the consumer. In the disclosures given for the mortgage, the creditor must reflect the terms of the buydown agreement. For example:

• The amount paid by the consumer is a prepaid finance charge (even if deposited in an escrow account).

• A composite annual percentage rate must be calculated, taking into account both interest rates, as well as the effect of the prepaid finance charge.

• The payment schedule must reflect the multiple payment levels resulting from the buydown.

The rules regarding consumer buydowns do not apply to transactions known as "lender buydowns," In lender buydowns. a creditor pays an amount (either into an account or to the party to whom the obligation is sold) to reduce the consumer's payments or interest rate for all or a portion of the credit term. Typically, these transactions are structured as a buydown of the interest rate during an initial period of the transaction with a higher than usual rate for the remainder of the term. The disclosures for lender buydowns should be based on the terms of the legal obligation between the consumer and the creditor. (See comment 17(c)(1)–3 for the analogous rules concerning third-party buydowns.)

5. *Split buydowns.* In certain transactions, a third party (such as a seller) and a consumer both pay an amount to the creditor to reduce the interest rate. The creditor must include the portion paid by the consumer in the finance charge and disclose the corresponding multiple payment levels and composite annual percentage rate. The portion paid by the third party and the corresponding reduction in interest rate, however, should not be reflected in the disclosures unless the lower rate is reflected in the credit contract. (See the discussion on third-party and consumer buydown transactions elsewhere in the commentary to §226.17(c).)

6. *Wrap-around financing.* Wrap-around transactions, usually loans, involve the creditor's wrapping the outstanding balance on an existing loan and advancing additional funds to the consumer. The pre-existing loan, which is wrapped, may be to the same consumer or to a different consumer. In either case, the consumer makes a single payment to the new creditor, who makes the payments on the pre-existing loan to the original creditor. Wrap-around loans or sales are considered new single-advance transactions, with an amount financed equalling the sum of the new funds advanced by the wrap creditor and the remaining principal owed to the original creditor on the pre-existing loan. In disclosing the itemization of the amount financed, the creditor may use a label such as "the amount that will be paid to creditor X" to describe the remaining principal balance on the pre-existing loan. This approach to Truth in Lending calculations has no effect on calculations required by other statutes, such as state usury laws.

7. *Wrap-around financing with balloon payments.* For wrap-around transactions involving a large final payment of the new funds before the maturity of the pre-existing loan, the amount financed is the sum of the new funds and the remaining principal on the pre-existing loan. The disclosures should be based on the shorter term of the wrap loan, with a large final payment of both the new funds and the total remaining principal on the pre-existing loan (although only the wrap loan will actually be paid off at that time).

8. *Basis of disclosures in variable-rate transactions.* The disclosures for a variable-rate transaction must be given for the full term of the transaction and must be based on the

terms in effect at the time of consummation. Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase. For example, in a loan with an initial rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that this rate will increase 5 percentage points. However, in a variable-rate transaction with a seller buydown that is reflected in the credit contract, a consumer buydown, or a discounted or premium rate, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term. (See the commentary to §226.17(c) for a discussion of buydown, discounted, and premium transactions and the commentary to section 226.19(a)(2) for a discussion of the redisclosure in certain residential mortgage transactions with a variable-rate feature).

9. *Use of estimates in variable-rate transactions.* The variable-rate feature does not, by itself, make the disclosures estimates.

10. *Discounted and premium variable-rate transactions.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

i. When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 day period before consummation in calculating a composite annual percentage rate.

ii. The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.

iii. If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

iv. Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of 1/4 of 1 percent applies, in accordance with §226.22(a)(3).

v. Examples of discounted variable-rate transactions include:

A. A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of $804.62 and 348 payments of $1,025.31. The finance charge should be $266,463.32 and the total of payments $366,463.32.

B. Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. The finance charge should be $265,234.76 and the total of payments $365,234.76.

C. Same loan as above, except with a 7½ percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payments should be reflected. The payment schedule should show 12 payments of $804.62, 12 payments of $864.97, 12 payments of $929.84, 12 payments of $999.58, and 312 payments of $1,070.04. The finance charge should be $277,040.60, and the total of payments $377,040.60.

vi. A loan in which the initial interest rate is set according to the index or formula used for later adjustments but is not set at the value of the index or formula at consummation is not a discounted variable-rate loan. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

11. *Examples of variable-rate transactions.* Variable-rate transactions include:

• Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. Disclosures must be based on the payment amortization (unless the specified term of the obligation with renewals is shorter) and on the rate in effect at the time of consummation of the transaction. (Examples of conditions within a consumer's control include requirements that a consumer be current in payments or continue to reside in the mortgaged property. In contrast, setting a limit on the rate at which the creditor would be obligated to renew or reserving the right to change the credit standards at the time of renewal are examples of conditions outside a consumer's control.) If, however, a creditor is not obligated to renew as described above, disclosures must be based on the term of the balloon-payment loan. Disclosures also must be based on the term of the balloon-payment loan in balloon-payment instruments in which the legal obligation provides that the loan will be renewed by a ''refinancing'' of the obligation, as that term is defined by §226.20(a). If it cannot be determined from the legal obligation that the loan will be renewed by a ''refinancing,'' disclosures must be based either on the term of the balloon-payment loan or on the payment amortization, depending on whether the creditor is unconditionally obligated to renew the loan as described above. (This discussion does not apply to construction loans subject to §226.17(c)(6).)

• ''Shared-equity'' or ''shared-appreciation'' mortgages that have a fixed rate of interest and an appreciation share based on the consumer's equity in the mortgaged property. The appreciation share is payable in a lump sum at a specified time. Disclosures must be based on the fixed interest rate. (As discussed in the commentary to §226.2, other types of shared-equity arrangements are not considered ''credit'' and are not subject to Regulation Z.)

• Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. The disclosures are to be based on the preferred rate.

• Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-rate transactions.

• ''Price level adjusted mortgages'' or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. Disclosures are to be based on the fixed interest rate.

12. *Graduated payment adjustable rate mortgages.* These mortgages involve both a variable interest rate and scheduled variations in payment amounts during the loan term. For example, under these plans, a series of graduated payments may be scheduled before rate adjustments affect payment amounts, or the initial scheduled payment may remain constant for a set period before rate adjustments affect the payment amount. In any case, the initial payment amount may be insufficient to cover the scheduled interest, causing negative amortization from the outset of the transaction. In these transactions, the disclosures should treat these features as follows:

• The finance charge includes the amount of negative amortization based on the assumption that the rate in effect at consummation remains unchanged.

• The amount financed does not include the amount of negative amortization.

• As in any variable-rate transaction, the annual percentage rate is based on the terms in effect at consummation.

• The schedule of payments discloses the amount of any scheduled initial payments followed by an adjusted level of payments based on the initial interest rate. Since some mortgage plans contain limits on the amount of the payment adjustment, the payment schedule may require several different levels of payments, even with the assumption that the original interest rate does not increase.

13. *Growth-equity mortgages.* Also referred to as payment-escalated mortgages, these mortgage plans involve scheduled payment increases to prematurely amortize the loan. The initial payment amount is determined as for a long-term loan with a fixed interest rate. Payment increases are scheduled periodically, based on changes in an index. The larger payments result in accelerated amortization of the loan. In disclosing these mortgage plans, creditors may either:

• Estimate the amount of payment increases, based on the best information reasonably available; or

• Disclose by analogy to the variable-rate disclosures in 226.18(f)(1).

(This discussion does not apply to growth-equity mortgages in which the amount of payment increases can be accurately determined at the time of disclosure. For these mortgages, as for graduated-payment mortgages, disclosures should reflect the scheduled increases in payments.)

14. *Reverse mortgages.* Reverse mortgages, also known as reverse annuity or home equity conversion mortgages, typically involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the loan (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these transactions, creditors must apply the following rules, as applicable:

• If the reverse mortgage has a specified period for disbursements but repayment is due only upon the occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as ''The disclosures assume that you will repay the loan at the time our payments to you end. As provided in your agreement, your repayment may be required at a different time.''

• If the reverse mortgage has neither a specified period for disbursements nor a specified repayment date and these terms will be determined solely by reference to future events including the consumer's death, the creditor may assume that the disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurence of the event estimated to be most likely to occur first.)

• In making the disclosures, the creditor must assume that all disbursements and accrued interest will be paid by the consumer. For example, if the note has a nonrecourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be disbursed will be repaid. In this case, however, the creditor may include a statement such as ''The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement.''

• Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. Such loans are considered variable-rate mortgages, as described in comment 17(c)(1)–11, and the appreciation feature must be disclosed in accordance with §226.18(f)(1). If the reverse mortgage has a variable interest rate, is written for a term greater than one year, and is secured by the consumer's principal dwelling, the shared appreciation feature must be described under §226.19(b)(2)(vii).

15. *Morris Plan transactions.* When a deposit account is created for the sole purpose of accumulating payments and then is applied to satisfy entirely the consumer's obligation in the transaction, each deposit made into the account is considered the same as a payment on a loan for purposes of making disclosures.

16. *Number of transactions.* Creditors have flexibility in handling credit extensions that may be viewed as multiple transactions. For example:

• When a creditor finances the credit sale of a radio and a television on the same day, the creditor may disclose the sales as either 1 or 2 credit sale transactions.

• When a creditor finances a loan along with a credit sale of health insurance, the creditor may disclose in one of several ways: a single credit sale transaction, a single loan transaction, or a loan and a credit sale transaction.

• The separate financing of a downpayment in a credit sale transaction may, but need not, be disclosed as 2 transactions (a credit sale and a separate transaction for the financing of the downpayment).

17. *Special rules for tax refund anticipation loans.* Tax refund loans, also known as refund anticipation loans (RALs), are transactions in which a creditor will lend up to the amount of a consumer's expected tax refund. RAL agreements typically require repayment upon demand, but also may provide that repayment is required when the refund is made. The agreements also typically provide that if the amount of the refund is less than the payment due, the consumer must pay the difference. Repayment often is made by a preauthorized offset to a consumer's account held with the creditor when the refund has been deposited by electronic transfer. Creditors may charge fees for RALs in addition to fees for filing the consumer's tax return electronically. In RAL transactions subject to the regulation the following special rules apply:

• If, under the terms of the legal obligation, repayment of the loan is required when the refund is received by the consumer (such as by deposit into the consumer's account), the disclosures should be based on the creditor's estimate of the time the refund will be delivered even if the loan also contains a demand clause. The practice of a creditor to demand repayment upon delivery of refunds does not determine whether the legal obligation requires that repayment be made at that time; this determination must be made according to applicable state or other law. (See comment 17(c)(5)–1 for the rules regarding disclosures if the loan is payable solely on demand or is payable either on demand or on an alternate maturity date.)

• If the consumer is required to repay more than the amount borrowed, the difference is a finance charge unless excluded under §226.4. In addition, to the extent that any fees charged in connection with the loan (such as for filing the tax return electronically) exceed those fees for a comparable cash transaction (that is, filing the tax return electronically without a loan), the difference must be included in the finance charge.

18. *Pawn Transactions.* When, in connection with an extension of credit, a consumer pledges or sells an item to a pawnbroker creditor in return for a sum of money and retains the right to redeem the item for a greater sum (the redemption price) within a specified period of time, disclosures are required. In addition to other disclosure requirements that may be applicable under §226.18, for purposes of pawn transactions:

i. The amount financed is the initial sum paid to the consumer. The pawnbroker creditor need not provide a separate itemization of the amount financed if that entire amount is paid directly to the consumer and the disclosed description of the amount financed is ''the amount of cash given directly to you'' or a similar phrase.

ii. The finance charge is the difference between the initial sum paid to the consumer and the redemption price plus any other finance charges paid in connection with the transaction. (See §226.4.)

iii. The term of the transaction, for calculating the annual percentage rate, is the period of time agreed to by the pawnbroker creditor and the consumer. The term of the transaction does not include a grace period (including any statutory grace period) after the agreed redemption date.

*Paragraph 17(c)(2)(i).*

1. *Basis for estimates.* Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time the disclosures are made. The ''reasonably available'' standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. For example, the creditor must at a minimum utilize generally accepted calculation tools, but need not invest in the most sophisticated computer program to make a particular type of calculation. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to the consumer for the time of consummation, to insurance companies for the cost of insurance, or to realtors for taxes and escrow fees. The creditor may utilize estimates in making disclosures even though the creditor knows that more precise information will be available by the point of consummation. However, new disclosures may be required under §226.17(f) or §226.19.

2. *Labelling estimates.* Estimates must be designated as such in the segregated disclosures. Even though other disclosures are based on the same assumption on which a specific estimated disclosure was based, the creditor has some flexibility in labelling the estimates. Generally, only the particular disclosure for which the exact information is unknown is labelled as an estimate. However, when several disclosures are affected because of the unknown information, the creditor has the option of labelling either every affected disclosure or only the disclosure primarily affected. For example, when the finance charge is unknown because the date of consummation is unknown, the creditor must label the finance charge as an estimate and may also label as estimates the total of payments and the payment schedule. When many disclosures are estimates, the creditor may use a general statement, such as ''all numerical disclosures except the late payment disclosure are estimates,'' as a method to label those disclosures as estimates.

3. *Simple-interest transactions.* If consumers do not make timely payments in a simple-interest transaction, some of the amounts calculated for Truth in Lending disclosures will differ from amounts that consumers will actually pay over the term of the transaction. Creditors may label disclosures as estimates in these transactions. For example, because the finance charge and total of payments may be larger than disclosed if consumers make late payments, creditors may label the finance charge and total of payments as estimates. On the other hand, creditors may choose not to label disclosures as estimates and may base all disclosures on the assumption that payments will be made on time, disregarding any possible inaccuracies resulting from consumers' payment patterns.

*Paragraph 17(c)(2)(ii).*

1. *Per-diem interest.* This paragraph applies to any numerical amount (such as the finance charge, annual percentage rate, or payment amount) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is

prepared, the disclosures are considered accurate under this rule, and affected disclosures are also considered accurate, even if the disclosures are not labeled as estimates. For example, if the amount of per-diem interest used to prepare disclosures is less than the amount of per-diem interest charged at consummation, and as a result the finance charge is understated by $200, the disclosed finance charge is considered accurate even though the understatement is not within the $100 tolerance of § 226.18(d)(1), and the finance charge was not labeled as an estimate. In this example, if in addition to the understatement related to the per-diem interest, a $90 fee is incorrectly omitted from the finance charge, causing it to be understated by a total of $290, the finance charge is considered accurate because the $90 fee is within the tolerance in § 226.18(d)(1).

*Paragraph 17(c)(3)*

1. *Minor variations.* Section 226.17(c)(3) allows creditors to disregard certain factors in calculating and making disclosures. For example:

- Creditors may ignore the effects of collecting payments in whole cents. Because payments cannot be collected in fractional cents, it is often difficult to amortize exactly an obligation with equal payments; the amount of the last payment may require adjustment to account for the rounding of the other payments to whole cents.
- Creditors may base their disclosures on calculation tools that assume that all months have an equal number of days, even if their practice is to take account of the variations in months for purposes of collecting interest. For example, a creditor may use a calculation tool based on a 360-day year, when it in fact collects interest by applying a factor of 1/365 of the annual rate to 365 days. This rule does not, however, authorize creditors to ignore, for disclosure purposes, the effects of applying 1/360 of an annual rate to 365 days.

2. *Use of special rules.* A creditor may utilize the special rules in § 226.17(c)(3) for purposes of calculating and making all disclosures for a transaction or may, at its option, use the special rules for some disclosures and not others.

*Paragraph 17(c)(4).*

1. *Payment schedule irregularities.* When one or more payments in a transaction differ from the others because of a long or short first period, the variations may be ignored in disclosing the payment schedule, finance charge, annual percentage rate, and other terms. For example:

- A 36-month auto loan might be consummated on June 8 with payments due on July 1 and the first of each succeeding month. The creditor may base its calculations on a payment schedule that assumes 36 equal intervals and 36 equal installment payments, even though a precise computation would produce slightly different amounts because of the shorter first period.
- By contrast, in the same example, if the first payment were not scheduled until August 1, the irregular first period would exceed the limits in § 226.17(c)(4); the creditor could not use the special rule and could not ignore the extra days in the first period in calculating its disclosures.

2. *Measuring odd periods.* In determining whether a transaction may take advantage of the rule in § 226.17(c)(4), the creditor must measure the variation against a regular period. For purposes of that rule:

- The first period is the period from the date on which the finance charge begins to be earned to the date of the first payment.
- The term is the period from the date on which the finance charge begins to be earned to the date of the final payment.
- The regular period is the most common interval between payments in the transaction.

In transactions involving regular periods that are monthly, semimonthly or multiples of a month, the length of the irregular and regular periods may be calculated on the basis of either the actual number of days or an assumed 30-day month. In other transactions, the length of the periods is based on the actual number of days.

3. *Use of special rules.* A creditor may utilize the special rules in § 226.17(c)(4) for purposes of calculating and making some disclosures but may elect not to do so for all of the disclosures. For example, the variations may be ignored in calculating and disclosing the annual percentage rate but taken into account in calculating and disclosing the finance charge and payment schedule.

4. *Relation to prepaid finance charges.* Prepaid finance charges, including ''odd-days'' or ''per-diem'' interest, paid prior to or at closing may not be treated as the first payment on a loan. Thus, creditors may not disregard an irregularity in disclosing such finance charges.

*Paragraph 17(c)(5).*

1. *Demand disclosures.* Disclosures for demand obligations are based on an assumed 1-year term, unless an alternate maturity date is stated in the legal obligation. Whether an alternate maturity date is stated in the legal obligation is determined by applicable law. An alternate maturity date is not inferred from an informal principal reduction agreement or a similar understanding between the parties. However, when the note itself specifies a principal reduction schedule (for example, ''payable on demand or $2,000 plus interest quarterly''), an alternate maturity is stated and the disclosures must reflect that date.

2. *Future event as maturity date.* An obligation whose maturity date is determined solely by a future event, as for example, a loan payable only on the sale of property, is not a demand obligation. Because no demand feature is contained in the obligation, demand disclosures under §226.18(i) are inapplicable. The disclosures should be based on the creditor's estimate of the time at which the specified event will occur, and may indicate the basis for the creditor's estimate, as noted in the commentary to §226.17(a).

3. *Demand after stated period.* Most demand transactions contain a demand feature that may be exercised at any point during the term, but certain transactions convert to demand status only after a fixed period. For example, in States prohibiting due-on-sale clauses, the Federal National Mortgage Association (FNMA) requires mortgages that it purchases to include a call option rider that may be exercised after 7 years. These mortgages are generally written as long-term obligations, but contain a demand feature that may be exercised only within a 30-day period at 7 years. The disclosures for these transactions should be based upon the legally agreed-upon maturity date. Thus, if a mortgage containing the 7-year FNMA call option is written as a 20-year obligation, the disclosures should be based on the 20-year term, with the demand feature disclosed under §226.18(i).

4. *Balloon mortgages.* Balloon payment mortgages, with payments based on a long-term amortization schedule and a large final payment due after a shorter term, are not demand obligations unless a demand feature is specifically contained in the contract. For example, a mortgage with a term of 5 years and a payment schedule based on 20 years would not be treated as a mortgage with a demand feature, in the absence of any contractual demand provisions. In this type of mortgage, disclosures should be based on the 5-year term.

*Paragraph 17(c)(6).*

1. *Series of advances.* Section 226.17(c)(6)(i) deals with a series of advances under an agreement to extend credit up to a certain amount. A creditor may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If these advances are treated as 1 transaction and the timing and amounts of advances are unknown, creditors must make disclosures based on estimates, as provided in §226.17(c)(2). If the advances are disclosed separately, disclosures must be provided before each advance occurs, with the disclosures for the first advance provided by consummation.

2. *Construction loans.* Section 226.17(c)(6)(ii) provides a flexible rule for disclosure of construction loans that may be permanently financed. These transactions have 2 distinct phases, similar to 2 separate transactions. The construction loan may be for initial construction or subsequent construction, such as rehabilitation or remodelling. The construction period usually involves several disbursements of funds at times and in amounts that are unknown at the beginning of that period, with the consumer paying only accrued interest until construction is completed. Unless the obligation is paid at that time, the loan then converts to permanent financing in which the loan amount is amortized just as in a standard mortgage transaction. Section 226.17(c)(6)(ii) permits the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for the 2 phases. This rule is available whether the consumer is initially obligated to accept construction financing only or is obligated to accept both construction and permanent financing from the outset. If the consumer is obligated on both phases and the creditor chooses to give 2 sets of disclosures, both sets must be given to the consumer initially, because both transactions would be consummated at that time. (Appendix D provides a method of calculating the annual percentage rate and other disclosures for construction loans, which may be used, at the creditor's option, in disclosing construction financing.)

3. *Multiple-advance construction loans.* Section 226.17(c)(6)(i) and (ii) are not mutually exclusive. For example, in a transaction that finances the construction of a dwelling that may be permanently financed by the same creditor, the construction phase may consist of a series of advances under an agreement to extend credit up to a certain amount. In these cases, the creditor may disclose the construction phase as either 1 or more than 1 transaction and also disclose the permanent financing as a separate transaction.

4. *Residential mortgage transaction.* See the commentary to §226.2(a)(24) for a discussion of the effect of §226.17(c)(6) on the definition of a residential mortgage transaction.

5. *Allocation of points.* When a creditor utilizes the special rule in §226.17(c)(6) to disclose credit extensions as multiple transactions, buyers points or similar amounts imposed on the consumer must be allocated for purposes of calculating disclosures. While such amounts should not be taken into account more than once in making calculations, they may be allocated between the transactions in any manner the creditor chooses. For example, if a construction-permanent loan is subject to 5 points imposed on the consumer and the creditor chooses to disclose the 2 phases separately, the 5 points may be allocated entirely to the construction loan, entirely to the permanent loan, or divided in any manner between the two. However, the entire 5 points may not be applied twice, that is, to both the construction and the permanent phases.

*17(d) Multiple creditors; multiple consumers.*

1. *Multiple creditors.* If a credit transaction involves more than one creditor:

- The creditors must choose which of them will make the disclosures.
- A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.
- All disclosures for the transaction must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure. For example, if one of the creditors is the seller, the total sale price disclosure under §226.18(j) must be made, even though the disclosing creditor is not the seller.

2. *Multiple consumers.* When two consumers are joint obligors with primary liability on an obligation, the disclosures may be given to either one of them. If one consumer is merely a surety or guarantor, the disclosures must be given to the principal debtor. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under §226.23, although the disclosures required under §226.19(b) need only be provided to the consumer who expresses an interest in a variable-rate loan program.

*17(e) Effect of subsequent events.*

1. *Events causing inaccuracies.* Inaccuracies in disclosures are not violations if attributable to events occurring after the disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to make new disclosures under §226.17(f) or §226.19 if the events occurred between disclosure and consummation or under §226.20 if the events occurred after consummation.

*17(f) Early disclosures.*

1. *Change in rate or other terms.* Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in this section, even if the initial disclosures would be considered accurate under the tolerances in §226.18(d) or 226.22(a). To illustrate:

i. *General.* A. If disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than ⅛ of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction, if early disclosures are marked as estimates and the disclosed annual percentage rate is within ⅛ of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

ii. *Nonmortgage loan.* If disclosures are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. (See §226.18(d)(2) of this part.)

iii. *Mortgage loan.* At the time TILA disclosures are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. Assuming there were no other changes requiring redisclosure, the creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time.

2. *Variable rate.* The addition of a variable rate feature to the credit terms, after early disclosures are given, requires new disclosures.

3. *Content of new disclosures.* If redisclosure is required, the creditor has the option of either providing a complete set of new disclosures, or providing disclosures of only the terms that vary from those originally disclosed. (See the commentary to §226.19(a)(2).)

4. *Special rules.* In residential mortgage transactions subject to §226.19, the creditor must redisclose if, between the delivery of the required early disclosures and consummation, the annual percentage rate changes by more than a stated tolerance. When subsequent events occur *after* consummation, new disclosures are required only if there is a refinancing or an assumption within the meaning of §226.20.

*Paragraph 17(f)(2).*

1. *Irregular transactions.* For purposes of this paragraph, a transaction is deemed to be ''irregular'' according to the definition in footnote 46 of §226.22(a)(3).

*17(g) Mail or telephone orders—delay in disclosures.*

1. *Conditions for use.* When the creditor receives a mail or telephone request for credit, the creditor may delay making the disclosures until the first payment is due if the following conditions are met:

- The credit request is initiated without face-to-face or direct telephone solicitation.

(Creditors may, however, use the special rule when credit requests are solicited by mail.)

• The creditor has supplied the specified credit information about its credit terms either to the individual consumer or to the public generally. That information may be distributed through advertisements, catalogs, brochures, special mailers, or similar means.

2. *Insurance.* The location requirements for the insurance disclosures under §226.18(n) permit them to appear apart from the other disclosures. Therefore, a creditor may mail an insurance authorization to the consumer and then prepare the other disclosures to reflect whether or not the authorization is completed by the consumer. Creditors may also disclose the insurance cost on a unit-cost basis, if the transaction meets the requirements of §226.17(g).

*17(h) Series of sales—delay in disclosures.*

1. *Applicability.* The creditor may delay the disclosures for individual credit sales in a series of such sales until the first payment is due on the current sale, assuming the 2 conditions in this paragraph are met. If those conditions are not met, the general timing rules in §266.17(b) apply.

2. *Basis of disclosures.* Creditors structuring disclosures for a series of sales under §226.17(h) may compute the total sale price as either:

- The cash price for the sale plus that portion of the finance charge and other charges applicable to that sale; or
- The cash price for the sale, other charges applicable to the sale, and the total finance charge and outstanding principal.

*17(i) Interim student credit extensions.*

1. *Definition.* Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. These plans include loans made under any student credit plan, whether government or private, where the repayment period does not begin immediately. (Certain student credit plans that meet this definition are exempt from Regulation Z. See §226.3(f).) Creditors in interim student credit extensions need not disclose the terms set forth in this paragraph at the time the credit is actually extended but must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under §226.18.

2. *Basis of disclosures.* The disclosures given at the time of execution of the interim note should reflect two annual percentage rates, one for the interim period and one for the repayment period. The use of §226.17(i) in making disclosures does not, by itself, make those disclosures estimates. Any portion of the finance charge, such as statutory interest, that is attributable to the interim period and is paid by the student (either as a prepaid finance charge, periodically during the interim period, in one payment at the end of the interim period, or capitalized at the beginning of the repayment period) must be reflected in the interim annual percentage rate. Interest subsidies, such as payments made by either a state or the Federal government on an interim loan, must be excluded in computing the annual percentage rate on the interim obligation, when the consumer has no contingent liability for payment of those amounts. Any finance charges that are paid separately by the student at the outset or withheld from the proceeds of the loan are prepaid finance charges. An example of this type of charge is the loan guarantee fee. The sum of the prepaid finance charges is deducted from the loan proceeds to determine the amount financed and included in the calculation of the finance charge.

3. *Consolidation.* Consolidation of the interim student credit extensions through a renewal note with a set repayment schedule is treated as a new transaction with disclosures made as they would be for a refinancing. Any unearned portion of the finance charge must be reflected in the new finance charge and annual percentage rate, and is not added to the new amount financed. In itemizing the amount financed under §226.18(c), the creditor may combine the principal balances remaining on the interim extensions at the time of consolidation and categorize them as the amount paid on the consumer's account.

4. *Approved student credit forms.* See the commentary to appendix H regarding disclosure forms approved for use in certain student credit programs.

References

*Statute:* Sections 121, 122, 124, and 128, and the Higher Education Act of 1965 (20 U.S.C. 1071) as amended by Pub. L. 97–35, August 13, 1981.

*Other sections:* Section 226.2 and appendix H.

*Previous regulation:* Sections 226.6 and 226.8.

*1981 changes:* With few exceptions, the disclosures must now appear apart from all other information, and may not be interspersed with that information. The disclosures must be based on the legal obligation between the parties, rather than any side agreement.

The assumed maturity period for demand loans has been increased from 6 months to 1 year. Any alternate maturity date must be stated in the legal obligation rather than inferred from the documents, in order to form a basis for disclosures.

In multiple-advance transactions, a series of advances up to a certain amount and construction loans that may be permanently financed may be disclosed, at the creditor's option, as either a single transaction or several transactions. Appendix D is applicable only to multiple advances for the construction of a dwelling, whereas its predecessor, Interpretation §226.813, could be used for all multiple-advance transactions.

If disclosures are made before the date of consummation, the creditor need not provide updated disclosures at consummation unless the annual percentage rate has changed beyond certain limits or a variable rate feature has been added.

*Section 226.18—Content of Disclosures*

1. *As applicable.* The disclosures required by this section need be made only as applicable. Any disclosure not relevant to a particular transaction may be eliminated entirely. For example:

- In a loan transaction, the creditor may delete disclosure of the total sale price.
- In a credit sale requiring disclosure of the total sale price under §226.18(j), the creditor may delete any reference to a downpayment where no downpayment is involved.

Where the amounts of several numerical disclosures are the same, the ''as applicable'' language also permits creditors to combine the terms, so long as it is done in a clear and conspicuous manner. For example:

- In a transaction in which the amount financed equals the total of payments, the creditor may disclose ''amount financed/total of payments,'' together with descriptive language, followed by a single amount.
- However, if the terms are separated on the disclosure statement and separate space is provided for each amount, both disclosures must be completed, even though the same amount is entered in each space.

2. *Format.* See the commentary to §226.17 and appendix H for a discussion of the format to be used in making these disclosures, as well as acceptable modifications.

*18(a) Creditor.*

1. *Identification of creditor.* The creditor making the disclosures must be identified. This disclosure may, at the creditor's option, appear apart from the other disclosures. Use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures; the one doing so must be identified.

*18(b) Amount financed.*

1. *Disclosure required.* The net amount of credit extended must be disclosed using the term *amount financed* and a descriptive explanation similar to the phrase in the regulation.

2. *Rebates and loan premiums.* In a loan transaction, the creditor may offer a premium in the form of cash or merchandise to prospective borrowers. Similarly, in a credit sale transaction, a seller's or manufacturer's rebate may be offered to prospective purchasers of the creditor's goods or services. At the creditor's option, these amounts may be either reflected in the Truth in Lending disclosures or disregarded in the disclosures. If the creditor chooses to reflect them in the §226.18 disclosures, rather than disregard them, they may be taken into account in any manner as part of those disclosures.

*Paragraph 18(b)(1).*

1. *Downpayments.* A downpayment is defined in §226.2(a)(18) to include, at the creditor's option, certain deferred downpayments or pick-up payments. A deferred downpayment that meets the criteria set forth in the definition may be treated as part of the downpayment, at the creditor's option.

- Deferred downpayments that are not treated as part of the downpayment (either because they do not meet the definition or because the creditor simply chooses not to treat them as downpayments) are included in the amount financed.
- Deferred downpayments that are treated as part of the downpayment are not part of the amount financed under §226.18(b)(1).

*Paragraph 18(b)(2).*

1. *Adding other amounts.* Fees or other charges that are not part of the finance charge and that are financed rather than paid separately at consummation of the transaction are included in the amount financed. Typical examples are real estate settlement charges and premiums for voluntary credit life and disability insurance excluded from the finance charge under §226.4. This paragraph does not include any amounts already accounted for under §226.18(b)(1), such as taxes, tag and title fees, or the costs of accessories or service policies that the creditor includes in the cash price.

*Paragraph 18(b)(3).*

1. *Prepaid finance charges.* Prepaid finance charges that are paid separately in cash or by check should be deducted under §226.18(b)(3) in calculating the amount financed. To illustrate:

- A consumer applies for a loan of $2,500 with a $40 loan fee. The face amount of the note is $2,500 and the consumer pays the loan fee separately by cash or check at closing. The principal loan amount for purposes of §226.18(b)(1) is $2,500 and $40 should be deducted under §226.18(b(3), thereby yielding an amount financed of $2,460.

In some instances, as when loan fees are financed by the creditor, finance charges are incorporated in the face amount of the note. Creditors have the option, when the charges are not add-on or discount charges, of determining a principal loan amount under §226.18(b)(1) that either includes or does not include the amount of the finance charges. (Thus the principal loan amount may, but need not, be determined to equal the face amount of the note.) When the finance charges are included in the principal loan amount, they should be deducted as prepaid finance charges under §226.18(b)(3). When the finance charges are not included in the principal loan amount, they should not be deducted under §226.18(b)(3). The following examples illustrate the application of §226.18(b) to this type of transaction. Each example assumes a loan request of $2,500 with a loan fee of $40; the creditor assesses the loan fee by increasing the face amount of the note to $2,540.

• If the creditor determines the principal loan amount under §226.18(b)(1) to be $2,540, it has included the loan fee in the principal loan amount and should deduct $40 as a prepaid finance charge under §226.18(b)(3), thereby obtaining an amount financed of $2,500.

• If the creditor determines the principal loan amount under §226.18(b)(1) to be $2,500, it has not included the loan fee in the principal loan amount and should not deduct any amount under §226.18(b)(3), thereby obtaining an amount financed of $2,500.

The same rules apply when the creditor does not increase the face amount of the note by the amount of the charge but collects the charge by withholding it from the amount advanced to the consumer. To illustrate, the following examples assume a loan request of $2,500 with a loan fee of $40; the creditor prepares a note for $2,500 and advances $2,460 to the consumer.

• If the creditor determines the principal loan amount under §226.18(b)(1) to be $2,500, it has included the loan fee in the principal loan amount and should deduct $40 as a prepaid finance charge under §226.18(b)(3), thereby obtaining an amount financed of $2,460.

• If the creditor determines the principal loan amount under §226.18(b)(1) to be $2,460, it has not included the loan fee in the principal loan amount and should not deduct any amount under §226.18(b)(3), thereby obtaining an amount financed of $2,460.

Thus in the examples where the creditor derives the net amount of credit by determining a principal loan amount that does not include the amount of the finance charge, no subtraction is appropriate. Creditors should note, however, that although the charges are not subtracted as *prepaid* finance charges in those examples, they are nonetheless finance charges and must be treated as such.

2. *Add-on or discount charges.* All finance charges must be deducted from the amount of credit in calculating the amount financed. If the principal loan amount reflects finance charges that meet the definition of a prepaid finance charge in §226.2, those charges are included in the §226.18(b)(1) amount and deducted under §226.18(b)(3). However, if the principal loan amount includes finance charges that do not meet the definition of a prepaid finance charge, the §226.18(b)(1) amount must exclude those finance charges. The following examples illustrate the application of §226.18(b) to these types of transactions. Each example assumes a loan request of $1000 for 1 year, subject to a 6 percent precomputed interest rate, with a $10 loan fee paid separately at consummation.

• The creditor assesses add-on interest of $60 which is added to the $1000 in loan proceeds for an obligation with a face amount of $1060. The principal for purposes of §226.18(b)(1) is $1000, no amounts are added under §226.18(b)(2), and the $10 loan fee is a prepaid finance charge to be deducted under §226.18(b)(3). The amount financed is $990.

• The creditor assesses discount interest of $60 and distributes $940 to the consumer, who is liable for an obligation with a face amount of $1000. The principal under §226.18(b)(1) is $940, which results in an amount financed of $930, after deduction of the $10 prepaid finance charge under §226.18(b)(3).

• The creditor assesses $60 in discount interest by increasing the face amount of the obligation to $1060, with the consumer receiving $1000. The principal under §226.18(b)(1) is thus $1000 and the amount financed $990, after deducting the $10 prepaid finance charge under §226.18(b)(3).

*18(c) Itemization of amount financed.*

1. *Disclosure required.* The creditor has 2 alternatives in complying with §226.18(c):

• The creditor may inform the consumer, on the segregated disclosures, that a written itemization of the amount financed will be provided on request, furnishing the itemization only if the customer in fact requests it.

• The creditor may provide an itemization as a matter of course, without notifying the consumer of the right to receive it or waiting for a request.

Whether given as a matter of course or only on request, the itemization must be provided at the same time as the other disclosures required by §226.18, although separate from those disclosures.

2. *Additional information.* Section 226.18(c) establishes only a minimum standard for the material to be included in the itemization of the amount financed. Creditors have considerable flexibility in revising or supplementing the information listed in §226.18(c) and shown in model form H–3, although no changes are required. The creditor may, for example, do one or more of the following:

i. Include amounts that reflect payments not part of the amount financed. For example, escrow items and certain insurance premiums may be included, as discussed in the commentary to §226.18(g).

ii. Organize the categories in any order. For example, the creditor may rearrange the terms in a mathematical progression that depicts the arithmetic relationship of the terms.

iii. Add categories. For example, in a credit sale, the creditor may include the cash price and the downpayment. If the credit sale involves a trade-in of the consumer's car and an existing lien on that car exceeds the value of the trade-in amount, the creditor may disclose the consumer's trade-in value, the creditor's payoff of the existing lien, and the resulting additional amount financed.

iv. Further itemize each category. For example, the amount paid directly to the consumer may be subdivided into the amount given by check and the amount credited to the consumer's savings account.

v. Label categories with different language from that shown in §226.18(c). For example, an amount paid on the consumer's account may be revised to specifically identify the account as ''your auto loan with us.''

vi. Delete, leave blank, mark ''N/A'' or otherwise not inapplicable categories in the itemization. For example, in a credit sale with no prepaid finance charges or amounts paid to others, the amount financed may consist of only the cash price less downpayment. In this case, the itemization may be composed of only a single category and all other categories may be eliminated.

3. *Amounts appropriate to more than one category*. When an amount may appropriately be placed in any of several categories and the creditor does not wish to revise the categories shown in §226.18(c), the creditor has considerable flexibility in determining where to show the amount. For example:

• In a credit sale, the portion of the purchase price being financed by the creditor may be viewed as either an amount paid to the consumer or an amount paid on the consumer's account.

4. *RESPA transactions*. The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide a good faith estimate of closing costs and a settlement statement listing the amounts paid by the consumer. Transactions subject to RESPA are exempt from the requirements of §226.18(c) if the creditor complies with RESPA's requirements for a good faith estimate and settlement statement. The itemization of the amount financed need not be given, even though the content and timing of the good faith estimate and settlement statement under RESPA differ from the requirements of §§226.18(c) and 226.19(a)(2). If a creditor chooses to substitute RESPA's settlement statement for the itemization when redisclosure is required under §226.19(a)(2), the statement must be delivered to the consumer at or prior to consummation. The disclosures required by §§226.18(c) and 226.19(a)(2) may appear on the same page or on the same document as the good faith estimate or the settlement statement, so long as the requirements of §226.17(a) are met.

*Paragraph 18(c)(1)(i).*

1. *Amounts paid to consumer*. This encompasses funds given to the consumer in the form of cash or a check, including joint proceeds checks, as well as funds placed in an asset account. It may include money in an interest-bearing account even if that amount is considered a required deposit under §226.18(r). For example, in a transaction with total loan proceeds of $500, the consumer receives a check for $300 and $200 is required by the creditor to be put into an interest-bearing account. Whether or not the $200 is a required deposit, it is part of the amount financed. At the creditor's option, it may be broken out and labeled in the itemization of the amount financed.

*Paragraph 18(c)(1)(ii).*

1. *Amounts credited to consumer's account*. The term *consumer's account* refers to an account in the nature of a debt with that creditor. It may include, for example, an unpaid balance on a prior loan, a credit sale balance or other amounts owing to that creditor. It does not include asset accounts of the consumer such as savings or checking accounts.

*Paragraph 18(c)(1)(iii).*

1. *Amounts paid to others*. This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled ''insurance'' or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of insurance premiums paid to different companies. Except for insurance companies and other categories noted in footnote 41, third parties must be identified by name.

2. *Charges added to amounts paid to others*. A sum is sometimes added to the amount of a fee charged to a consumer for a service provided by a third party (such as for an extended warranty or a service contract) that is payable in the same amount in comparable cash and credit transactions. In the credit transaction, the amount is retained by the creditor. Given the flexibility permitted in meeting the requirements of the amount financed itemization (see the commentary to §226.18(c)), the creditor in such cases may reflect that the creditor has retained a portion of the amount paid to others. For example, the creditor could add to the category ''amount paid to others'' language such as ''(we may be retaining a portion of this amount).''

*Paragraph 18(c)(1)(iv).*

1. *Prepaid finance charge*. Prepaid finance charges that are deducted under §226.18(b)(3) must be disclosed under this section. The prepaid finance charges must be shown as a total amount but may, at the creditor's option, also be further itemized and described.

All amounts must be reflected in this total, even if portions of the prepaid finance charge are also reflected elsewhere. For example, if at consummation the creditor collects interim interest of $30 and a credit report fee of $10, a total prepaid finance charge of $40 must be shown. At the creditor's option, the credit report fee paid to a third party may also be shown elsewhere as an amount included in §226.18(c)(1)(iii). The creditor may also further describe the 2 components of the prepaid finance charge, although no itemization of this element is required by §226.18(c)(1)(iv).

2. *Prepaid mortgage insurance premiums.* RESPA requires creditors to give consumers a settlement statement disclosing the costs associated with mortgage loan transactions. Included on the settlement statement are mortgage insurance premiums collected at settlement, which are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amount for mortgage insurance listed on the line for mortgage insurance on the settlement statement (line 1002 on HUD–1 or HUD 1–A), without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for mortgage insurance disclosed in conformance with RESPA shall be deemed to be accurate for purposes of Regulation Z.

*18(d) Finance charge.*

1. *Disclosure required.* The creditor must disclose the finance charge as a dollar amount, using the term *finance charge,* and must include a brief description similar to that in §226.18(d). The creditor may, but need not, further modify the descriptor for variable rate transactions with a phrase such as *which is subject to change.* The finance charge must be shown on the disclosures only as a total amount; the elements of the finance charge must not be itemized in the segregated disclosures, although the regulation does not prohibit their itemization elsewhere.

2. [Reserved]

*18(d)(2) Other credit.*

1. *Tolerance.* When a finance charge error results in a misstatement of the amount financed, or some other dollar amount for which the regulation provides no specific tolerance, the misstated disclosure does not violate the act or the regulation if the finance charge error is within the permissible tolerance under this paragraph.

*18(e) Annual percentage rate.*

1. *Disclosure required.* The creditor must disclose the cost of the credit as an annual rate, using the term *annual percentage rate,* plus a brief descriptive phrase comparable to that used in §226.18(e). For variable rate transactions, the descriptor may be further modified with a phrase such as *which is subject to change.* Under §226.17(a), the terms *annual percentage rate* and *finance charge* must be more conspicuous than the other required disclosures.

2. *Exception.* Footnote 42 provides an exception for certain transactions in which no annual percentage rate disclosure is required.

*18(f) Variable rate.*

1. *Coverage.* The requirements of §226.18(f) apply to all transactions in which the terms of the legal obligation allow the creditor to increase the rate originally disclosed to the consumer. It includes not only increases in the interest rate but also increases in other components, such as the rate of required credit life insurance. The provisions, however, do not apply to increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral. Section 226.18(f)(1) applies to variable-rate transactions that are not secured by the consumer's principal dwelling and to those that are secured by the principal dwelling but have a term of one year or less. Section 226.18(f)(2) applies to variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. Moreover, transactions subject to §226.18(f)(2) are subject to the special early disclosure requirements of §226.19(b). (However, ''shared-equity'' or ''shared-appreciation'' mortgages are subject to the disclosure requirements of §226.18(f)(1) and not to the requirements of §§226.18(f)(2) and 226.19(b) regardless of the general coverage of those sections.) Creditors are permitted under footnote 43 to substitute in any variable-rate transaction the disclosures required under §226.19(b) for those disclosures ordinarily required under 226.18(f)(1). Creditors who provide variable-rate disclosures under §226.19(b) must comply with all of the requirements of that section, including the timing of disclosures, and must also provide the disclosures required under §226.18(f)(2). Creditors utilizing footnote 43 may, but need not, also provide disclosures pursuant to §226.20(c). (Substitution of disclosures under §226.18(f)(1) in transactions subject to §226.19(b) is not permitted under the footnote.)

*Paragraph 18(f)(1).*

1. *Terms used in disclosure.* In describing the variable rate feature, the creditor need not use any prescribed terminology. For example, limitations and hypothetical examples may be described in terms of interest rates rather than annual percentage rates. The model forms in appendix H provide examples of ways in which the variable rate disclosures may be made.

2. *Conversion feature.* In variable-rate transactions with an option permitting consumers to convert to a fixed-rate transaction, the conversion option is a variable-rate feature that must be disclosed. In making disclosures under §226.18(f)(1), creditors should disclose the fact that the rate may increase

upon conversion; identify the index or formula used to set the fixed rate; and state any limitations on and effects of an increase resulting from conversion that differ from other variable-rate features. Because §226.18(f)(1)(iv) requires only one hypothetical example (such as an example of the effect on payments resulting from changes in the index), a second hypothetical example need not be given.

*Paragraph 18(f)(1)(i).*

1. *Circumstances.* The circumstances under which the rate may increase include identification of any index to which the rate is tied, as well as any conditions or events on which the increase is contingent.

• When no specific index is used, any identifiable factors used to determine whether to increase the rate must be disclosed.

• When the increase in the rate is purely discretionary, the fact that any increase is within the creditor's discretion must be disclosed.

• When the index is internally defined (for example, by that creditor's prime rate), the creditor may comply with this requirement by either a brief description of that index or a statement that any increase is in the discretion of the creditor. An externally defined index, however, must be identified.

*Paragraph 18(f)(1)(ii).*

1. *Limitations.* This includes any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the life of the transaction. When there are no limitations, the creditor may, but need not, disclose that fact. Limitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations. (See §226.30 for the rule requiring that a maximum interest rate be included in certain variable-rate transactions.)

*Paragraph 18(f)(1)(iii).*

1. *Effects.* Disclosure of the effect of an increase refers to an increase in the number or amount of payments or an increase in the final payment. In addition, the creditor may make a brief reference to negative amortization that may result from a rate increase. (See the commentary to §226.17(a)(1) regarding directly related information.) If the effect cannot be determined, the creditor must provide a statement of the possible effects. For example, if the exercise of the variable-rate feature may result in either more or larger payments, both possibilities must be noted.

*Paragraph 18(f)(1)(iv).*

1. *Hypothetical example.* The example may, at the creditor's option appear apart from the other disclosures. The creditor may provide either a standard example that illustrates the terms and conditions of that type of credit offered by that creditor or an example that directly reflects the terms and conditions of the particular transaction. In transactions with more than one variable-rate feature, only one hypothetical example need be provided. (See the commentary to section 226.17(a)(1) regarding disclosure of more than one hypothetical example as directly related information.)

2. *Hypothetical example not required.* The creditor need not provide a hypothetical example in the following transactions with a variable-rate feature:

- Demand obligations with no alternate maturity date.
- Interim student credit extensions.
- Multiple-advance construction loans disclosed pursuant to appendix D, Part I.

*Paragraph 18(f)(2).*

1. *Disclosure required.* In variable-rate transactions that have a term greater than one year and are secured by the consumer's principal dwelling, the creditor must give special early disclosures under §226.19(b) in addition to the later disclosures required under §226.18(f)(2). The disclosures under §226.18(f)(2) must state that the transaction has a variable-rate feature and that variable-rate disclosures have been provided earlier. (See the commentary to §226.17(a)(1) regarding the disclosure of certain directly related information in addition to the variable-rate disclosures required under §226.18(f)(2).)

*18(g) Payment schedule.*

1. *Amounts included in repayment schedule.* The repayment schedule should reflect all components of the finance charge, not merely the portion attributable to interest. A prepaid finance charge, however, should not be shown in the repayment schedule as a separate payment. The payments may include amounts beyond the amount financed and finance charge. For example, the disclosed payments may, at the creditor's option, reflect certain insurance premiums where the premiums are not part of either the amount financed or the finance charge, as well as real estate escrow amounts such as taxes added to the payment in mortage transactions.

2. *Deferred downpayments.* As discussed in the commentary to §226.2(a)(18), deferred downpayments or pick-up payments that meet the conditions set forth in the definition of downpayment may be treated as part of the downpayment. Even if treated as a downpayment, that amount may nevertheless be disclosed as part of the payment schedule, at the creditor's option.

3. *Total number of payments.* In disclosing the number of payments for transactions with more than one payment level, creditors may but need not disclose as a single figure the total number of payments for all levels. For example, in a transaction calling for 108 payments of $350, 240 payments of $335, and 12 payments of $330, the creditor need not state that there will be a total of 360 payments.

4. *Timing of payments.* i. *General rule.* Section 226.18(g) requires creditors to disclose the timing of payments. To meet this requirement, creditors may list all of the payment due dates. They also have the option of specifying the ''period of payments'' scheduled to repay the obligation. As a general rule, creditors that choose this option must disclose the payment intervals or frequency, such as ''monthly''or ''bi-weekly,'' and the calendar date that the beginning payment is due. For example, a creditor may disclose that payments are due ''monthly beginning on July 1, 1998.'' This information, when combined with the number of payments, is necessary to define the repayment period and enable a consumer to determine all of the payment due dates.

ii. *Exception.* In a limited number of circumstances, the beginning-payment date is unknown and difficult to determine at the time disclosures are made. For example, a consumer may become obligated on a credit contract that contemplates the delayed disbursement of funds based on a contingent event, such as the completion of home repairs. Disclosures may also accompany loan checks that are sent by mail, in which case the initial disbursement and repayment dates are solely within the consumer's control. In such cases, if the beginning-payment date is unknown the creditor may use an estimated date and label the disclosure as an estimate pursuant to §226.17(c). Alternatively, the disclosure may refer to the occurrence of a particular event, for example, by disclosing that the beginning payment is due ''30 days after the first loan disbursement.'' This information also may be included with an estimated date to explain the basis for the creditor's estimate. See Comment 17(a)(1)–5(iii).

5. *Mortgage insurance.* The payment schedule should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. The payment schedule must reflect the legal obligation, as determined by applicable state or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, the payment schedule should reflect 130 premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, the payment schedule should reflect 128 monthly premium payments. (For assumptions in calculating a payment schedule that includes mortgage insurance that must be automatically terminated, see comments 17(c)(1)–8 and 17(c)(1)–10.)

*Paragraph 18(g)(1).*

1. *Demand obligations.* In demand obligations with no alternate maturity date, the creditor has the option of disclosing only the due dates or periods of scheduled interest payments in the first year (for example, ''interest payable quarterly'' or ''interest due the first of each month''). The amounts of the interest payments need not be shown.

*Paragraph 18(g)(2).*

1. *Abbreviated disclosure.* The creditor may disclose an abbreviated payment schedule when the amount of each regularly scheduled payment (other than the first or last payment) includes an equal amount to be applied on principal and a finance charge computed by application of a rate to the decreasing unpaid balance. This option is also available when mortgage-guarantee insurance premiums, paid either monthly or annually, cause variations in the amount of the scheduled payments, reflecting the continual decrease or increase in the premium due. In addition, in transactions where payments vary because interest and principal are paid at different intervals, the two series of payments may be disclosed separately and the abbreviated payment schedule may be used for the interest payments. For example, in transactions with fixed quarterly principal payments and monthly interest payments based on the outstanding principal balance, the amount of the interest payments will change quarterly as principal declines. In such cases the creditor may treat the interest and principal payments as two separate series of payments, separately disclosing the number, amount, and due dates of principal payments, and, using the abbreviated payment schedule, the number, amount, and due dates of interest payments. This option may be used when interest and principal are scheduled to be paid on the same date of the month as well as on different dates of the month. The creditor using this alternative must disclose the dollar amount of the highest and lowest payments and make reference to the variation in payments.

2. *Combined payment schedule disclosures.* Creditors may combine the option in this paragraph with the general payment schedule requirements in transactions where only a portion of the payment schedule meets the conditions of §226.18(g)(2). For example, in a graduated payment mortgage where payments rise sharply for 5 years and then decline over the next 25 years because of decreasing mortgage insurance premiums, the first 5 years would be disclosed under the general rule in §226.18(g) and the next 25 years according to the abbreviated schedule in §226.18(g)(2).

3. *Effect on other disclosures.* Section 226.18(g)(2) applies only to the payment

schedule disclosure. The actual amounts of payments must be taken into account in calculating and disclosing the finance charge and the annual percentage rate.

*Paragraph 18(h) Total of payments.*

1. *Disclosure required.* The total of payments must be disclosed using that term, along with a descriptive phrase similar to the one in the regulation. The descriptive explanation may be revised to reflect a variable rate feature with a brief phrase such as ''based on the current annual percentage rate which may change.''

2. *Calculation of total of payments.* The total of payments is the sum of the payments disclosed under §226.18(g). For example, if the creditor disclosed a deferred portion of the downpayment as part of the payment schedule, that payment must be reflected in the total disclosed under this paragraph.

3. *Exception.* Footnote 44 permits creditors to omit disclosure of the total of payments in single-payment transactions. This exception does not apply to a transaction calling for a single payment of principal combined with periodic payments of interest.

4. *Demand obligations.* In demand obligations with no alternate maturity date, the creditor may omit disclosure of payment amounts under §226.18(g)(1). In those transactions, the creditor need not disclose the total of payments.

*Paragraph 18(i) Demand feature.*

1. *Disclosure requirements.* The disclosure requirements of this provision apply not only to transactions payable on demand from the outset, but also to transactions that are not payable on demand at the time of consummation but convert to a demand status after a stated period. In demand obligations in which the disclosures are based on an assumed maturity of 1 year under §226.17(c)(5), that fact must also be stated. Appendix H contains model clauses that may be used in making this disclosure.

2. *Covered demand features.* The type of demand feature triggering the disclosures required by §226.18(i) includes only those demand features contemplated by the parties as part of the legal obligation. For example, this provision does not apply to transactions that covert to a demand status as a result of the consumer's default. A due-on-sale clause is not considered a demand feature. A creditor may, but need not, treat its contractual right to demand payment of a loan made to its executive officers as a demand feature to the extent that the contractual right is required by Regulation O (12 CFR 215.5) or other federal law.

3. *Relationship to payment schedule disclosures.* As provided in §226.18(g)(1), in demand obligations with no alternate maturity date, the creditor need only disclose the due dates or payment periods of any scheduled interest payments for the first year. If the demand obligation states an alternate maturity, however, the disclosed payment schedule must reflect that stated term; the special rule in §226.18(g)(1) is not available.

*Paragraph 18(j) Total sale price.*

1. *Disclosure required.* In a credit sale transaction, the *total sale price* must be disclosed using that term, along with a descriptive explanation similar to the one in the regulation. For variable rate transactions, the descriptive phrase may, at the creditor's option, be modified to reflect the variable rate feature. For example, the descriptor may read: ''The total cost of your purchase on credit, which is subject to change, including your downpayment of * * *.'' The reference to a downpayment may be eliminated in transactions calling for no downpayment.

2. *Calculation of total sale price.* The figure to be disclosed is the sum of the cash price, other charges added under §226.18(b)(2), and the finance charge disclosed under §226.18(d).

3. *Effect of existing liens.* When a credit sale transaction involves property that is being used as a trade-in (an automobile, for example) and that has a lien exceeding the value of the trade-in, the total sale price is affected by the amount of any cash provided. (See comment 2(a)(18)–3.) To illustrate, assume a consumer finances the purchase of an automobile with a cash price of $20,000. Another vehicle used as a trade-in has a value of $8,000 but has an existing lien of $10,000, leaving a $2,000 deficit that the consumer must finance.

i. If the consumer pays $1,500 in cash, the creditor may apply the cash first to the lien, leaving a $500 deficit, and reflect a downpayment of $0. The total sale price would include the $20,000 cash price, an additional $500 financed under §226.18(b)(2), and the amount of the finance charge. Alternatively, the creditor may reflect a downpayment of $1,500 and finance the $2,000 deficit. In that case, the total sale price would include the sum of the $20,000 cash price, the $2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

ii. If the consumer pays $3,000 in cash, the creditor may apply the cash first to extinguish the lien and reflect the remainder as a downpayment of $1,000. The total sale price would reflect the $20,000 cash price and the amount of the finance charge. (The cash payment extinguishes the trade-in deficit and no charges are added under §226.18(b)(2).) Alternatively, the creditor may elect to reflect a downpayment of $3,000 and finance the $2,000 deficit. In that case, the total sale price would include the sum of the $20,000 cash price, the $2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

*Paragraph 18(k) Prepayment.*

1. *Disclosure required.* The creditor must give a definitive statement of whether or not

a penalty will be imposed or a rebate will be given.

• The fact that no penalty will be imposed may not simply be inferred from the absence of a penalty disclosure; the creditor must indicate that prepayment will not result in a penalty.

• If a penalty or refund is possible for one type of prepayment, even though not for all, a positive disclosure is required. This applies to any type of prepayment, whether voluntary or involuntary as in the case of prepayments resulting from acceleration.

• Any difference in rebate or penalty policy, depending on whether prepayment is voluntary or not, must not be disclosed with the segregated disclosures.

2. *Rebate-penalty disclosure.* A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for example, mortgages with mortgage-guarantee insurance). In these cases, disclosures about both prepayment rebates and penalties are required. Sample form H–15 in appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

3. *Prepaid finance charge.* The existence of a prepaid finance charge in a transaction does not, by itself, require a disclosure under §226.18(k). A prepaid finance charge is not considered a penalty under §226.18(k)(1), nor does it require a disclosure under §226.18(k)(2). At its option, however, a creditor may consider a prepaid finance charge to be under §226.18(k)(2). If a disclosure is made under §226.18(k)(2) with respect to a prepaid finance charge or other finance charge, the creditor may further identify that finance charge. For example, the disclosure may state that the borrower "will not be entitled to a refund of the prepaid finance charge" or some other term that describes the finance charge.

*Paragraph 18(k)(1).*

1. *Penalty.* This applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The term *penalty* as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are penalties include, for example:

• Interest charges for any period after prepayment in full is made. (See the commentary to §226.17(a)(1) regarding disclosure of interest charges assessed for periods after prepayment in full as directly related information.)

• A minimum finance charge in a simple-interest transaction. (See the commentary to §226.17(a)(1) regarding the disclosure of a minimum finance charge as directly related information.) Items which are not penalties include, for example:

• Loan guarantee fees

• Interim interest on a student loan

*Paragraph 18(k)(2).*

1. *Rebate of finance charge.* This applies to any finance charges that do not take account of each reduction in the principal balance of an obligation. This category includes, for example:

• Precomputed finance charges such as add-on charges.

• Charges that take account of some but not all reductions in principal, such as mortgage guarantee insurance assessed on the basis of an annual declining balance, when the principal is reduced on a monthly basis.

No description of the method of computing earned or unearned finance charges is required or permitted as part of the segregated disclosures under this section.

*Paragraph 18(l) Late payment.*

1. *Definition.* This paragraph requires a disclosure only if charges are added to individual delinquent installments by a creditor who otherwise considers the transaction ongoing on its original terms. Late payment charges do not include:

• The right of acceleration.

• Fees imposed for actual collection costs, such as repossession charges or attorney's fees.

• Deferral and extension charges.

• The continued accrual of simple interest at the contract rate after the payment due date. However, an increase in the interest rate is a late payment charge to the extent of the increase.

2. *Content of disclosure.* Many state laws authorize the calculation of late charges on the basis of either a percentage or a specified dollar amount, and permit imposition of the lesser or greater of the 2 charges. The disclosure made under §226.18(l) may reflect this alternative. For example, stating that the charge in the event of a late payment is 5% of the late amount, not to exceed $5.00, is sufficient. Many creditors also permit a grace period during which no late charge will be assessed; this fact may be disclosed as directly related information. (See the commentary to §226.17(a).)

*Paragraph 18(m) Security interest.*

1. *Purchase money transactions.* When the collateral is the item purchased as part of, or with the proceeds of, the credit transaction, section 226.18(m) requires only a general identification such as "the property purchased in this transaction." However, the creditor may identify the property by item or type instead of identifying it more generally with a phrase such as "the property purchased in this transaction." For example, a creditor may identify collateral as "a

motor vehicle,'' or as ''the property purchased in this transaction.'' Any transaction in which the credit is being used to purchase the collateral is considered a purchase money transaction and the abbreviated identification may be used, whether the obligation is treated as a loan or a credit sale.

2. *Nonpurchase money transactions.* In nonpurchase money transactions, the property subject to the security interest must be identified by item or type. This disclosure is satisfied by a general disclosure of the category of property subject to the security interest, such as ''motor vehicles,'' ''securities,'' ''certain household items,'' or ''household goods.'' (Creditors should be aware, however, that the Federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) At the creditor's option, however, a more precise identification of the property or goods may be provided.

3. *Mixed collateral.* In some transactions in which the credit is used to purchase the collateral, the creditor may also take other property of the consumer as security. In those cases, a combined disclosure must be provided, consisting of an identification of the purchase money collateral consistent with comment 18(m)–1 and a specific identification of the other collateral consistent with comment 18(m)–2.

4. *After-acquired property.* An after-acquired property clause is not a security interest to be disclosed under §226.18(m).

5. *Spreader clause.* The fact that collateral for pre-existing credit with the institution is being used to secure the present obligation constitutes a security interest and must be disclosed. (Such security interests may be known as ''spreader'' or ''dragnet'' clauses, or as ''cross-collateralization'' clauses.) A specific identification of that collateral is unnecessary but a reminder of the interest arising from the prior indebtedness is required. The disclosure may be made by using language such as ''collateral securing other loans with us may also secure this loan.'' At the creditor's option, a more specific description of the property involved may be given.

6. *Terms used in disclosure.* No specified terminology is required in disclosing a security interest. Although the disclosure may, at the creditor's option, use the term *security interest,* the creditor may designate its interest by using, for example, *pledge, lien,* or *mortgage.*

7. *Collateral from third party.* In certain transactions, the consumer's obligation may be secured by collateral belonging to a third party. For example, a loan to a student may be secured by an interest in the property of the student's parents. In such cases, the security interest is taken in connection with the transaction and must be disclosed, even though the property encumbered is owned by someone other than the consumer.

*18(n) Insurance and debt cancellation.*

1. *Location.* This disclosure may, at the creditor's option, appear apart from the other disclosures. It may appear with any other information, including the amount financed itemization, any information prescribed by state law, or other supplementary material. When this information is disclosed with the other segregated disclosures, however, no additional explanatory material may be included.

2. *Debt cancellation.* Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law. Otherwise, they may provide a parallel disclosure that refers to debt cancellation coverage.

*Paragraph 18(o) Certain security interest charges.*

1. *Format.* No special format is required for these disclosures; under §226.4(e), taxes and fees paid to government officials with respect to a security interest may be aggregated, or may be broken down by individual charge. For example, the disclosure could be labelled ''filing fees and taxes'' and all funds disbursed for such purposes may be aggregated in a single disclosure. This disclosure may appear, at the creditor's option, apart from the other required disclosures. The inclusion of this information on a statement required under the Real Estate Settlement Procedures Act is sufficient disclosure for purposes of Truth in Lending.

*Paragraph 18(p) Contract reference.*

1. *Content.* Creditors may substitute, for the phrase ''appropriate contract document,'' a reference to specific transaction documents in which the additional information is found, such as ''promissory note'' or ''retail installment sale contract.'' A creditor may, at its option, delete inapplicable items in the contract reference, as for example when the contract documents contain no information regarding the right of acceleration.

*Paragraph 18(q) Assumption policy.*

1. *Policy statement.* In many mortgages, the creditor cannot determine, at the time disclosure must be made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors such as the creditworthiness of the subsequent borrower, the potential for impairment of the lender's security, and execution of an assumption agreement by the subsequent borrower. In cases where uncertainty exists as to the future assumability of a mortgage, the disclosure under §226.18(q) should reflect that fact. In making disclosures in such cases, the creditor may use phrases such as ''subject to conditions,''

"under certain circumstances," or "depending on future conditions." The creditor may provide a brief reference to more specific criteria such as a due-on-sale clause, although a complete explanation of all conditions is not appropriate. For example, the disclosure may state, "Someone buying your home may be allowed to assume the mortgage on its original terms, subject to certain conditions, such as payment of an assumption fee." See comment 17(a)(1)–5 for an example for a reference to a due-on-sale clause.

2. *Original terms.* The phrase *original terms* for purposes of §226.18(q) does not preclude the imposition of an assumption fee, but a modification of the basic credit agreement, such as a change in the contract interest rate, represents different terms.

*Paragraph 18(r) Required deposit.*

1. *Disclosure required.* The creditor must inform the consumer of the existence of a required deposit. (Appendix H provides a model clause that may be used in making that disclosure.) Footnote 45 describes 3 types of deposits that need not be considered required deposits. Use of the phrase "need not" permits creditors to include the disclosure even in cases where there is doubt as to whether the deposit constitutes a required deposit.

2. *Pledged account mortgages.* In these transactions, a consumer pledges as collateral funds that the consumer deposits in an account held by the creditor. The creditor withdraws sums from that account to supplement the consumer's periodic payments. Creditors may treat these pledged accounts as required deposits or they may treat them as consumer buydowns in accordance with the commentary to §226.17(c)(1).

3. *Escrow accounts.* The escrow exception in footnote 45 applies, for example, to accounts for such items as maintenance fees, repairs, or improvements, whether in a realty or a nonrealty transaction. (See the commentary to §226.17(c)(1) regarding the use of escrow accounts in consumer buydown transactions.)

4. *Interest-bearing accounts.* When a deposit earns at least 5 percent interest per year, no disclosure is required under §226.18(r). This exception applies whether the deposit is held by the creditor or by a third party.

5. *Morris Plan transactions.* A deposit under a Morris Plan, in which a deposit account is created for the sole purpose of accumulating payments and this is applied to satisfy entirely the consumer's obligation in the transaction, is not a required deposit.

6. *Examples of amounts excluded.* The following are among the types of deposits that need not be treated as required deposits:

- Requirement that a borrower be a customer or a member even if that involves a fee or a minimum balance.
- Required property insurance escrow on a mobile home transaction.
- Refund of interest when the obligation is paid in full.
- Deposits that are immediately available to the consumer.
- Funds deposited with the creditor to be disbursed (for example, for construction) before the loan proceeds are advanced.
- Escrow of condominium fees.
- Escrow of loan proceeds to be released when the repairs are completed.

References

*Statute:* Section 128, the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320) and the Real Estate Settlement Procedures Act (12 U.S.C. 2602).

*Other sections:* Sections 226.2, 226.17, and appendix H.

*Other regulations:* 12 CFR 545.6–2(a) and 12 CFR Part 29.

*Previous regulation:* Sections 226.4 and 226.8.

*1981 changes:* Five of the required disclosures must be explained to the consumer in a manner similar to the descriptive phrases shown in the regulation. A written itemization of the amount financed need not be provided unless the consumer requests it. The finance charge must be provided in all transactions, including real estate transactions, but must be shown only as a total amount. The disclosed finance charge is considered accurate if it is within a specified range.

The variable rate hypothetical is required in all variable rate transactions and may be either general or transaction-specific. The penalty and rebate disclosures in the event of prepayment have been modified and combined. The requirement of an explanation of how the rebates or penalties are computed has been eliminated. The late payment disclosure has also been narrowed to include only charges imposed before maturity for late payments.

The information required in the security interest disclosure has been decreased by the deletion of the type of security interest and a reduction in the property description requirement. The disclosure of the required deposit is limited to a statement that the annual percentage rate does not reflect the required deposit; the presence of a required deposit has no effect on the annual percentage rate.

Two disclosure requirements have been added: A reference to the contract documents for additional information and, in a residential mortgage transaction, a statement of the creditor's assumption policy.

*Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*

*Paragraph 19(a)(1) Time of disclosure.*

1. *Coverage.* This section requires early disclosure of credit terms in residential mortgage transactions that are also subject to

the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X, administered by the Department of Housing and Urban Development (HUD). To be covered by this section, a transaction must be both a residential mortgage transaction under §226.2(a) and a federally related mortgage loan under RESPA. ''Federally related mortgage loan'' is defined under RESPA (12 USC 2602) and Regulation X (24 CFR 3500.5(b)), and is subject to any interpretations by HUD.

2. *Timing and use of estimates.* Truth in Lending disclosures must be given (a) before consummation or (b) within three business days after the creditor receives the consumer's written application, whichever is earlier. The three-day period for disclosing credit terms coincides with the time period within which creditors subject to RESPA must provide good faith estimates of settlement costs. If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under §226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as ''all numerical disclosures except the late-payment disclosure are estimates'') instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (See the Commentary to §226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to §226.17(a)(1).

3. *Written application.* Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a ''written application'' has been received. In general, Regulation X requires disclosures ''to every person from whom the Lender receives or for whom it prepares a written application on an application form or forms normally used by the Lender for a Federally Related Mortgage Loan'' (24 CFR 3500.6(a)). An application is received when it reaches the creditor in any of the ways applications are normally transmitted—by mail, hand delivery, or through an intermediary agent or broker. (See comment 19(b)–3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

4. *Exceptions.* The creditor may determine within the 3-day period that the application will not or cannot be approved on the terms requested, as, for example, when a consumer applies for a type or amount of credit that the creditor does not offer, or the consumer's application cannot be approved for some other reason. In that case, the creditor need not make the disclosures under this section. If the creditor fails to provide early disclosures and the transaction is later consummated on the original terms, the creditor will be in violation of this provision. If, however, the consumer amends the application because of the creditor's unwillingness to approve it on its original terms, no violation occurs for not providing disclosures based on the original terms. But the amended application is a new application subject to this section.

5. *Itemization of amount financed.* In many residential mortgage transactions, the itemization of the amount financed required by §226.18(c) will contain items, such as origination fees or points, that also must be disclosed as part of the good faith estimates of settlement costs required under RESPA. Creditors furnishing the RESPA good faith estimates need not give consumers any itemization of the amount financed, either with the disclosures provided within 3 days after application or with the disclosures given at consummation or settlement.

*Paragraph 19(a)(2) Redisclosure required.*

1. *Conditions for redisclosure.* Creditors must make new disclosures if the annual percentage rate at consummation differs from the estimate originally disclosed by more than ⅛ of 1 percentage point in regular transactions or ¼ of 1 percentage point in irregular transactions, as defined in footnote 46 of §226.22(a)(3). The creditor must also redisclose if a variable rate feature is added to the credit terms after the original disclosures have been made. The creditor has the option of redisclosing information under other circumstances, if it wishes to do so.

2. *Content of new disclosures.* If redisclosure is required, the creditor may provide a complete set of new disclosures, or may redisclose only the terms that vary from those originally disclosed. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of §226.17(a). If the creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce a different finance charge, and often a new schedule of payments; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed, the accurate terms must be disclosed. However, no new disclosures are required if the *only* inaccuracies involve estimates other than the annual percentage rate, and no variable rate feature has been added.

3. *Timing.* Redisclosures, when necessary, must be given no later than ''consummation or settlement.'' ''Consummation'' is defined in §226.2(a). ''Date of settlement'' is defined in Regulation X (24 CFR 3500.2(a)) and is subject to any interpretations issued under RESPA and Regulation X.

4. *Basis of disclosures.* In some cases, a creditor may delay redisclosure until settlement, which may be at a time later than consummation. If a creditor chooses to redisclose at settlement, disclosures may be based on the terms in effect at settlement, rather than at consummation. For example, in a variable-rate transaction, a creditor may choose to base disclosures on the terms in effect at settlement despite the general rule in the commentary to section 18(f) that variable-rate disclosures should be based on the terms in effect at consummation.

*19(b) Certain variable-rate transactions.*

1. *Coverage.* Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial acquisition of the consumer's principal dwelling, but also to any other closed-end variable-rate transaction secured by the principal dwelling. Closed-end variable-rate transactions that are not secured by the principal dwelling, or are secured by the principal dwelling but have a term of one year or less, are subject to the disclosure requirements of §226.18(f)(1) rather than those of §226.19(b). (Furthermore, ''shared-equity'' or ''shared-appreciation'' mortgages are subject to the disclosure requirements of §226.18(f)(1) rather than those of §226.19(b) regardless of the general coverage of those sections.) For purposes of this section, the term of a variable-rate demand loan is determined in accordance with the commentary to §226.17(c)(5). In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under §226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with §226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§226.18(f)(2)(ii) or 226.19(b).

2. *Timing.* A creditor must give the disclosures required under this section at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

i. *Intermediary agent or broker.* In cases where a creditor receives a written application through an intermediary agent or broker, however, footnote 45b provides a substitute timing rule requiring the creditor to deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. (See comment 19(b)–3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) This three-day rule also applies where the creditor takes an application over the telephone.

ii. *Telephone request.* In cases where the consumer merely requests an application over the telephone, the creditor must include the early disclosures required under this section with the application that is sent to the consumer.

iii. *Mail solicitations.* In cases where the creditor solicits applications through the mail, the creditor must also send the disclosures required under this section if an application form is included with the solicitation.

iv. *Conversion.* In cases where an open-end credit account will convert to a closed-end transaction subject to this section under a written agreement with the consumer, disclosures under this section may be given at the time of conversion. (See the commentary to §226.20(a) for information on the timing requirements for §226.19(b)(2) disclosures when a variable-rate feature is later added to a transaction.)

v. *Electronic applications.* In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application form is made available by electronic communication, such as on a creditor's Internet web site. Creditors have flexibility in satisfying this requirement. For example, if a link is not used, the application form must clearly and conspicuously refer the consumer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, creditors may provide a link to electronic disclosures as long as consumers cannot bypass the disclosure before submitting the application form. Or the disclosures could automatically appear on the screen when the application form appears. A creditor need not confirm that the consumer has read the disclosures or brochure.

3. *Intermediary agent or broker.* In certain transactions involving an ''intermediary agent or broker,'' a creditor may delay providing disclosures. A creditor may not delay providing disclosures in transactions involving either a legal agent (as determined by applicable law) or any other third party that is not an ''intermediary agent or broker.'' In determining whether or not a transaction involves an ''intermediary agent or broker'' the following factors should be considered:

• The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the creditor. The greater the percentage of total loan applications submitted by the broker in any given period of time, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor during the next period.

• The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the broker. (This factor is applicable only if the creditor has such information.) The greater the percentage of total loan applications received by the broker that is submitted to a creditor in any given period of time, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor during the next period.

• The amount of work (such as document preparation) the creditor expects to be done by the broker on an application based on the creditor's prior dealings with the broker and on the creditor's requirements for accepting applications, taking into consideration the customary practice of brokers in a particular area. The more work that the creditor expects the broker to do on an application, in excess of what is usually expected of a broker in that area, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor.

An example of an ''intermediary agent or broker'' is a broker who, customarily within a brief period of time after receiving an application, inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them. The broker is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, it might request a credit report and an appraisal (or even prepare an entire loan package if customary in that particular area).

4. *Other variable-rate regulations.* Transactions in which the creditor is required to comply with and has complied with the disclosure requirements of the variable-rate regulations of other Federal agencies are exempt from the requirements of §226.19(b), by virtue of footnote 45a, and are exempt from the requirements of §226.20(c), by virtue of footnote 45c. Those variable-rate regulations include the regulations issued by the Federal Home Loan Bank Board and those issued by the Department of Housing and Urban Development. The exception in footnotes 45a and 45c is also available to creditors that are required by state law to comply with the federal variable-rate regulations noted above and to creditors that are authorized by title VIII of the Depository Institutions Act of 1982 (12 U.S.C. 3801 *et seq.*) to make loans in accordance with those regulations. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

5. *Examples of variable-rate transactions.*

(i) The following transactions, if they have a term greater than one year and are secured by the consumer's principal dwelling, constitute variable-rate transactions subject to the disclosure requirements of §226.19(b).

(A) Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. (See comment 17(c)(1)–11 for a discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.)

(B) Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. The disclosures under §§226.19(b)(1) and 226.19(b)(2)(v), (viii), (ix), and (xii) are not applicable to such loans.

(C) ''Price-level-adjusted mortgages'' or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. The disclosures under §226.19(b)(1) are not applicable to such loans, nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest rate, or interest rate discounts: Section 226.19(b)(2) (i), (iii), (iv), (v), (vi), (vii), (viii), and (ix). (See comments 20(c)–2 and 30–1 regarding the inapplicability of variable-rate adjustment notices and interest rate limitations to price-level-adjusted or similar mortgages.)

(ii) Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-rate transactions.

*Paragraph 19(b)(1).*

1. *Substitute.* Creditors who wish to use publications other than the *Consumer Handbook on Adjustable Rate Mortgages* must make a good faith determination that their brochures are suitable substitutes to the *Consumer Handbook.* A substitute is suitable if it is, at a minimum, comparable to the Consumer Handbook in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the *Consumer Handbook.*

2. *Applicability.* The *Consumer Handbook* need not be given for variable-rate transactions subject to this section in which the

underlying interest rate is fixed. (See comment 19(b)–5 for an example of a variable-rate transaction where the underlying interest rate is fixed.)

*Paragraph 19(b)(2).*

1. *Disclosure for each variable-rate program.* A creditor must provide disclosures to the consumer that fully describe each of the creditor's variable-rate loan programs in which the consumer expresses an interest. If a program is made available only to certain customers of an institution, a creditor need not provide disclosures for that program to other consumers who express a general interest in a creditor's ARM programs. Disclosures must be given at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier. If program disclosures cannot be provided because a consumer expresses an interest in individually negotiating loan terms that are not generally offered, disclosures reflecting those terms may be provided as soon as reasonably possible after the terms have been decided upon, but not later than the time a non-refundable fee is paid. If a consumer who has received program disclosures subsequently expresses an interest in other available variable-rate programs subject to 226.19(b)(2), or the creditor and consumer decide on a program for which the consumer has not received disclosures, the creditor must provide appropriate disclosures as soon as reasonably possible. The creditor, of course, is permitted to give the consumer information about additional programs subject to §226.19(b) initially.

2. *Variable-rate loan program defined.* i. Generally, if the identification, the presence or absence, or the exact value of a loan feature must be disclosed under this section, variable-rate loans that differ as to such features constitute separate loan programs. For example, separate loan programs would exist based on differences in any of the following loan features:

A. The index or other formula used to calculate interest rate adjustments.

B. The rules relating to changes in the index value, interest rate, payments, and loan balance.

C. The presence or absence of, and the amount of, rate or payment caps.

D. The presence of a demand feature.

E. The possibility of negative amortization.

F. The possibility of interest rate carryover.

G. The frequency of interest rate and payment adjustments.

H. The presence of a discount feature.

I. In addition, if a loan feature must be taken into account in preparing the disclosures required by §226.19(b)(2)(viii), variable-rate loans that differ as to that feature constitute separate programs under §226.19(b)(2).

ii. If, however, a representative value may be given for a loan feature or the feature need not be disclosed under §226.19(b)(2), variable-rate loans that differ as to such features do not constitute separate loan programs. For example, separate programs would not exist based on differences in the following loan features:

A. The amount of a discount.

B. The amount of a margin.

3. *Form of program disclosures.* A creditor may provide separate program disclosure forms for each ARM program it offers or a single disclosure form that describes multiple programs. A disclosure form may consist of more than one page. For example, a creditor may attach a separate page containing the historical payment example for a particular program. A disclosure form describing more than one program need not repeat information applicable to each program that is described. For example, a form describing multiple programs may disclose the information applicable to all of the programs in one place with the various program features (such as options permitting conversion to a fixed rate) disclosed separately. The form, however, must state if any program feature that is described is available only in conjunction with certain other program features. Both the separate and multiple program disclosures may illustrate more than one loan maturity or payment amortization—for example, by including multiple payment and loan balance columns in the historical payment example. Disclosures may be inserted or printed in the *Consumer Handbook* (or a suitable substitute) as long as they are identified as the creditor's loan program disclosures.

4. *As applicable.* The disclosures required by this section need only be made as applicable. Any disclosure not relevant to a particular transaction may be eliminated. For example, if the transaction does not contain a demand feature, the disclosure required under §226.19(b)(2)(x) need not be given. As used in this section, *payment* refers only to a payment based on the interest rate, loan balance and loan term, and does not refer to payment of other elements such as mortgage insurance premiums.

5. *Revisions.* A creditor must revise the disclosures required under this section once a year as soon as reasonably possible after the new index value becomes available. Revisions to the disclosures also are required when the loan program changes.

*Paragraph 19(b)(2)(i).*

1. *Change in interest rate, payment, or term.* A creditor must disclose the fact that the terms of the legal obligation permit the creditor, after consummation of the transaction, to increase (or decrease) the interest rate, payment, or term of the loan initially disclosed to the consumer. For example, the disclosures for a variable-rate program in

which the interest rate and payment (but not loan term) can change might read, ''Your interest rate and payment can change yearly.'' In transactions where the term of the loan may change due to rate fluctuations, the creditor must state that fact.

*Paragraph 19(b)(2)(ii).*

1. *Identification of index or formula.* If a creditor ties interest rate changes to a particular index, this fact must be disclosed, along with a source of information about the index. For example, if a creditor uses the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity as its index, the disclosure might read, ''Your index is the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year published weekly in the *Wall Street Journal.''* If no particular index is used, the creditor must briefly describe the formula used to calculate interest rate changes.

2. *Changes at creditor's discretion.* If interest rate changes are at the creditor's discretion, this fact must be disclosed. If an index is internally defined, such as by a creditor's prime rate, the creditor should either briefly describe that index or state that interest rate changes are at the creditor's discretion.

*Paragraph 19(b)(2)(iii).*

1. *Determination of interest rate and payment.* This provision requires an explanation of how the creditor will determine the consumer's interest rate and payment. In cases where a creditor bases its interest rate on a specific index and adjusts the index through the addition of a margin, for example, the disclosure might read, ''Your interest rate is based on the index plus a margin, and your payment will be based on the interest rate, loan balance, and remaining loan term.'' In transactions where paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor must disclose this fact. For example, the disclosure might read, ''Your periodic payments will not fully amortize your loan and you will be required to make a single payment of the periodic payment plus the remaining unpaid balance at the end of the loan term.'' The creditor, however, need not reflect any irregular final payment in the historical example or in the disclosure of the initial and maximum rates and payments. If applicable, the creditor should also disclose that the rate and payment will be rounded.

*Paragraph 19(b)(2)(iv).*

1. *Current margin value and interest rate.* Because the disclosures can be prepared in advance, the interest rate and margin may be several months old when the disclosures are delivered. A statement, therefore, is required alerting consumers to the fact that they should inquire about the current margin value applied to the index and the current interest rate. For example, the disclosure might state, ''Ask us for our current interest rate and margin.''

*Paragraph 19(b)(2)(v).*

1. *Discounted and premium interest rate.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. If the initial interest rate will be a discount or a premium rate, creditors must alert the consumer to this fact. For example, if a creditor discounted a consumer's initial rate, the disclosure might state, ''Your initial interest rate is not based on the index used to make later adjustments.'' (See the commentary to §226.17(c)(1) for a further discussion of discounted and premium variable-rate transactions.) In addition, the disclosure must suggest that consumers inquire about the amount that the program is currently discounted. For example, the disclosure might state, ''Ask us for the amount our adjustable rate mortgages are currently discounted.'' In a transaction with a consumer buydown or with a third-party buydown that will be incorporated in the legal obligation, the creditor should disclose the program as a discounted variable-rate transaction, but need not disclose additional information regarding the buydown in its program disclosures. (See the commentary to §226.19(b)(2)(viii) for a discussion of how to reflect the discount or premium in the historical example or the maximum rate and payment disclosure).

*Paragraph 19(b)(2)(vi).*

1. *Frequency.* The frequency of interest rate and payment adjustments must be disclosed. If interest rate changes will be imposed more frequently or at different intervals than payment changes, a creditor must disclose the frequency and timing of both types of changes. For example, in a variable-rate transaction where interest rate changes are made monthly, but payment changes occur on an annual basis, this fact must be disclosed. In certain ARM transactions, the interval between loan closing and the initial adjustment is not known and may be different from the regular interval for adjustments. In such cases, the creditor may disclose the initial adjustment period as a range of the minimum and maximum amount of time from consummation or closing. For example, the creditor might state: ''The first adjustment to your interest rate and payment will occur no sooner than 6 months and no later than 18 months after closing. Subsequent adjustments may occur once each year after the first adjustment.'' (See comments 19(b)(2)(viii)(A)–7 and

19(b)(2)(viii)(B)–4 for guidance on other disclosures when this alternative disclosure rule is used.)

*Paragraph 19(b)(2)(vii).*

1. *Rate and payment caps.* The creditor must disclose limits on changes (increases or decreases) in the interest rate or payment. If an initial discount is not taken into account in applying overall or periodic rate limitations, that fact must be disclosed. If separate overall or periodic limitations apply to interest rate increases resulting from other events, such as the exercise of a fixed-rate conversion option or leaving the creditor's employ, those limitations must also be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. (See §226.30 for the rule requiring that a maximum interest rate be included in certain variable-rate transactions.) The creditor need not disclose each periodic or overall rate limitation that is currently available. As an alternative, the creditor may disclose the range of the lowest and highest periodic and overall rate limitations that may be applicable to the creditor's ARM transactions. For example, the creditor might state: ''The limitation on increases to your interest rate at each adjustment will be set at an amount in the following range: Between 1 and 2 percentage points at each adjustment. The limitation on increases to your interest rate over the term of the loan will be set at an amount in the following range: Between 4 and 7 percentage points above the initial interest rate.'' A creditor using this alternative rule must include a statement in its program disclosures suggesting that the consumer ask about the overall rate limitations currently offered for the creditor's ARM programs. (See comments 19(b)(2)(viii)(A)–6 and 19(b)(2)(viii)(B)–3 for an explanation of the additional requirements for a creditor using this alternative rule for disclosure of periodic and overall rate limitations.)

2. *Negative amortization and interest rate carryover.* A creditor must disclose, where applicable, the possibility of negative amortization. For example, the disclosure might state, ''If any of your payments is not sufficient to cover the interest due, the difference will be added to your loan amount.'' Loans that provide for more than one way to trigger negative amortization are separate variable-rate programs requiring separate disclosures. (See the commentary to §226.19(b)(2) for a discussion on the definition of a variable-rate loan program and the format for disclosure.) If a consumer is given the option to cap monthly payments that may result in negative amortization, the creditor must fully disclose the rules relating to the option, including the effects of exercising the option (such as negative amortization will occur and the principal loan balance will increase); however, the disclosure in §226.19(b)(2)(viii) need not be provided.

3. *Conversion option.* If a loan program permits consumers to convert their variable-rate loans to fixed-rate loans, the creditor must disclose that the interest rate may increase if the consumer converts the loan to a fixed-rate loan. The creditor must also disclose the rules relating to the conversion feature, such as the period during which the loan may be converted, that fees may be charged at conversion, and how the fixed rate will be determined. The creditor should identify any index or other measure or formula used to determine the fixed rate and state any margin to be added. In disclosing the period during which the loan may be converted and the margin, the creditor may use information applicable to the conversion feature during the six months preceding preparation of the disclosures and state that the information is representative of conversion features recently offered by the creditor. The information may be used until the program disclosures are otherwise revised. Although the rules relating to the conversion option must be disclosed, the effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example or in the calculation of the initial and maximum interest rate and payments.

4. *Preferred-rate loans.* Section 226.19(b) applies to preferred-rate loans, where the rate will increase upon the occurrence of some event, such as an employee leaving the creditor's employ, whether or not the underlying rate is fixed or variable. In these transactions, the creditor must disclose the event that would allow the creditor to increase the rate such as that the rate may increase if the employee leaves the creditor's employ. The creditor must also disclose the rules relating to termination of the preferred rate, such as that fees may be charged when the rate is changed and how the new rate will be determined.

*Paragraph 19(b)(2)(viii).*

1. *Historical example and initial and maximum interest rates and payments.* A creditor may disclose both the historical example and the initial and maximum interest rates and payments.

*Paragraph 19(b)(2)(viii)(A).*

1. *Index movement.* This section requires a creditor to provide an historical example, based on a $10,000 loan amount originating in 1977, showing how interest rate changes implemented according to the terms of the loan program would have affected payments and the loan balance at the end of each year during a 15-year period. (In all cases, the creditor need only calculate the payments and loan balance for the term of the loan. For example, in a five-year loan, a creditor would show the payments and loan balance for the five-year term, from 1977 to 1981, with a zero

loan balance reflected for 1981. For the remaining ten years, 1982–1991, the creditor need only show the remaining index values, margin and interest rate and must continue to reflect all significant loan program terms such as rate limitations affecting them.) Pursuant to this section, the creditor must provide a history of index values for the preceding 15 years. Initially, the disclosures would give the index values from 1977 to the present. Each year thereafter, the revised program disclosures should include an additional year's index value until 15 years of values are shown. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values are available in giving a history and payment example. In all cases, only one index value per year need be shown. Thus, in transactions where interest rate adjustments are implemented more frequently than once per year, a creditor may assume that the interest rate and payment resulting from the index value chosen will stay in effect for the entire year for purposes of calculating the loan balance as of the end of the year and for reflecting other loan program terms. In cases where interest rate changes are at the creditor's discretion (see the commentary to §226.19(b)(2)(ii)), the creditor must provide a history of the rates imposed for the preceding 15 years, beginning with the rates in 1977. In giving this history, the creditor need only go back as far as the creditor's rates can reasonably be determined.

2. *Selection of index values.* The historical example must reflect the method by which index values are determined under the program. If a creditor uses an average of index values or any other index formula, the history given should reflect those values. The creditor should select one date or, when an average of single values is used as an index, one period and should base the example on index values measured as of that same date or period for each year shown in the history. A date or period at any time during the year may be selected, but the same date or period must be used for each year in the historical example. For example, a creditor could use values for the first business day in July or for the first week ending in July for each of the 15 years shown in the example.

3. *Selection of margin.* For purposes of the disclosure required under §226.19(b)(2)(viii)(A), a creditor may select a representative margin that has been used during the six months preceding preparation of the disclosures, and should disclose that the margin is one that the creditor has used recently. The margin selected may be used until a creditor revises the disclosure form.

4. *Amount of discount or premium.* For purposes of the disclosure required under §226.19(b)(2)(viii)(A), a creditor may select a discount or premium (amount and term) that has been used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the historical example for as long as the discount or premium is in effect. A creditor may assume that a discount that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example. For example, a 3-month discount may be treated as being in effect for the entire first year of the example; a 15-month discount may be treated as being in effect for the first two years of the example. In illustrating the effect of the discount or premium, creditors should adjust the value of the interest rate in the historical example, and should not adjust the margin or index values. For example, if during the six months preceding preparation of the disclosures the fully indexed rate would have been 10% but the first year's rate under the program was 8%, the creditor would discount the first interest rate in the historical example by 2 percentage points.

5. *Term of the loan.* In calculating the payments and loan balances in the historical example, a creditor need not base the disclosures on each term to maturity or payment amortization that it offers. Instead, disclosures for ARMs may be based upon terms to maturity or payment amortizations of 5, 15 and 30 years, as follows: ARMs with terms or amortizations from over 1 year to 10 years may be based on a 5-year term or amortization; ARMs with terms or amortizations from over 10 years to 20 years may be based on a 15-year term or amortization; and ARMs with terms or amortizations over 20 years may be based on a 30-year term or amortization. Thus, disclosures for ARMs offered with any term from over 1 year to 40 years may be based solely on terms of 5, 15 and 30 years. Of course, a creditor may always base the disclosures on the actual terms or amortizations offered. If the creditor bases the disclosures on 5-, 15- or 30-year terms or payment amortization as provided above, the term or payment amortization used in making the disclosure must be stated.

6. *Rate caps.* A creditor using the alternative rule described in comment 19(b)(2)(vii)–1 for disclosure of rate limitations must base the historical example upon the highest periodic and overall rate limitations disclosed under section 226.19(b)(2)(vii). In addition, the creditor must state the limitations used in the historical example. (See comment 19(b)(2)(viii)(B)–3 for an explanation of the use of the highest rate limitation in other disclosures.)

7. *Frequency of adjustments.* In certain transactions, creditors may use the alternative rule described in comment 19(b)(2)(vi)–1 for disclosure of the frequency of rate and payment adjustments. In such cases, the creditor may assume for purposes

of the historical example that the first adjustment occurred at the end of the first full year in which the adjustment could occur. For example, in an ARM in which the first adjustment may occur between 6 and 18 months after closing and annually thereafter, the creditor may assume that the first adjustment occurred at the end of the first year in the historical example. (See comment 19(b)(2)(viii)(B)–4 for an explanation of how to compute the maximum interest rate and payment when the initial adjustment period is not known.)

*Paragraph 19(b)(2)(viii)(B).*

1. *Initial and maximum interest rates and payments.* The disclosure form must state the initial and maximum interest rates and payments for a $10,000 loan originated at an initial interest rate (index value plus margin adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure. (See comment 19(b)(2)–5 on revisions to the loan program disclosure.) In calculating the maximum payment under this paragraph, a creditor should assume that the interest rate increases as rapidly as possible under the loan program, and the maximum payment disclosed should reflect the amortization of the loan during this period. Thus, in a loan with 2 percentage point annual (and 5 percentage point overall) interest rate limitations or ''caps,'' the maximum interest rate would be 5 percentage points higher than the initial interest rate disclosed. Moreover, the loan would not reach the maximum interest rate until the fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed would reflect the amortization of the loan during this period. If the loan program includes a discounted or premium initial interest rate, the initial interest rate should be adjusted by the amount of the discount or premium.

2. *Term of the loan.* In calculating the initial and maximum payments, the creditor need not base the disclosures on each term to maturity or payment amortization offered under the program. Instead, the creditor may follow the rules set out in comment 19(b)(2)(viii)(A)–5.

If a historical example is provided under §226.19(b)(2)(viii)(A), the terms to maturity or payment amortization used in the historical example must be used in calculating the initial and maximum payment. In addition, creditors must state the term or payment amortization used in making the disclosures under this section.

3. *Rate caps.* A creditor using the alternative rule for disclosure of interest rate limitations described in comment 19(b)(2)(vii)–1 must calculate the maximum interest rate and payment based upon the highest periodic and overall rate limitations disclosed under §226.19(b)(2)(vii). In addition, the creditor must state the rate limitations used in calculating the maximum interest rate and payment. (See comment 19(b)(2)(viii)(A)–6 for an explanation of the use of the highest rate limitation in other disclosures.)

4. *Frequency of adjustments.* In certain transactions, a creditor may use the alternative rule for disclosure of the frequency of rate and payment adjustments described in comment 19(b)(2)(vi)–1. In such cases, the creditor must base the calculations of the initial and maximum rates and payments upon the earliest possible first adjustment disclosed under §226.19(b)(2)(vi). (See comment 19(b)(2)(viii)(A)–7 for an explanation of how to disclose the historical example when the initial adjustment period is not known.)

5. *Periodic payment statement.* The statement that the periodic payment may increase or decrease substantially may be satisfied by the disclosure in paragraph 19(b)(2)(vi) if it states for example, ''your monthly payment can increase or decrease substantially based on annual changes in the interest rate.''

*Paragraph 19(b)(2)(ix).*

1. *Calculation of payments.* A creditor is required to include a statement on the disclosure form that explains how a consumer may calculate his or her actual monthly payments for a loan amount other than $10,000. The example should be based upon the most recent payment shown in the historical example or upon the initial interest rate reflected in the maximum rate and payment disclosure. In transactions in which the latest payment shown in the historical example is not for the latest year of index values shown (such as in a five-year loan), a creditor may provide additional examples based on the initial and maximum payments disclosed under §226.19(b)(2)(viii)(B). The creditor, however, is not required to calculate the consumer's payments. (See the model clauses in appendix H–4(C).)

*Paragraph 19(b)(2)(x).*

1. *Demand feature.* If a variable-rate loan subject to §226.19(b) requirements contains a demand feature as discussed in the commentary to §226.18(i), this fact must be disclosed. (Pursuant to §226.18(i), creditors would also disclose the demand feature in the standard disclosures given later.)

*Paragraph 19(b)(2)(xi).*

1. *Adjustment notices.* A creditor must disclose to the consumer the type of information that will be contained in subsequent notices of adjustments and when such notices will be provided. (See the commentary to §226.20(c) regarding notices of adjustments.) For example, the disclosure might state, ''You will be notified at least 25, but no more than 120, days before the due date of a payment at a new level. This notice will contain information about the index and interest rates, payment amount, and loan balance.'' In transactions where there may be interest

rate adjustments without accompanying payment adjustments in a year, the disclosure might read, "You will be notified once each year during which interest rate adjustments, but no payment adjustments, have been made to your loan. This notice will contain information about the index and interest rates, payment amount, and loan balance."

*Paragraph 19(b)(2)(xii).*

1. *Multiple loan programs.* A creditor that offers multiple variable-rate loan programs is required to have disclosures for each variable-rate loan program subject to §226.19(b)(2). Unless disclosures for all of its variable-rate programs are provided initially, the creditor must inform the consumer that other closed-end variable-rate programs exist, and that disclosure forms are available for these additional loan programs. For example, the disclosure form might state, "Information on other adjustable rate mortgage programs is available upon request."

References

*Statute:* Section 128(b)(2) and the Real Estate Settlement Procedures Act (12 U.S.C. 2602).

*Other sections:* Sections 226.2, 226.17, and 226.22.

*Other regulations:* Regulation X (24 CFR 3500.2(a), 3500.5(b), and 3500.6(a)).

*Previous regulation:* None.

*1981 changes:* This section implements section 128(b)(2), a new provision that requires early disclosure of credit terms in certain mortgage transactions.

*Section 226.20 Subsequent Disclosure Requirements*

*Paragraph 20(a) Refinancings.*

1. *Definition.* A refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

• Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

• A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

2. *Exceptions.* A transaction is subject to §226.20(a) only if it meets the general definition of a refinancing. Section 226.20(a) (1) through (5) lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable-rate.*

i. If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment mortgage that was previously disclosed as a variable-rate transaction.

ii. Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

A. Increases the rate based on a variable-rate feature that was not previously disclosed; or

B. Adds a variable-rate feature to the obligation. A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction to a comparable index, whether the change replaces the existing index or substitutes an index for one that no longer exists.

iii. If either of the events in paragraph 20(a)3.ii.A. or ii.B. occurs in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under §226.19(b) also must be given at that time.

4. *Unearned finance charge.* In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.

5. *Coverage.* Section 226.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A "refinancing" by any other person is a new transaction under the regulation, not a refinancing under this section.

*Paragraph 20(a)(1).*

1. *Renewal.* This exception applies both to obligations with a single payment of principal and interest and to obligations with periodic payments of interest and a final payment of principal. In determining whether a new obligation replacing an old one is a renewal of the original terms or a refinancing, the creditor may consider it a renewal even if:

- Accrued unpaid interest is added to the principal balance.
- Changes are made in the terms of renewal resulting from the factors listed in §226.17(c)(3).
- The principal at renewal is reduced by a curtailment of the obligation.

*Paragraph 20(a)(2).*

1. *Annual percentage rate reduction.* A reduction in the annual percentage rate with a corresponding change in the payment schedule is not a refinancing. If the annual percentage rate is subsequently increased (even though it remains below its original level) and the increase is effected in such a way that the old obligation is satisfied and replaced, new disclosures must then be made.

2. *Corresponding change.* A corresponding change in the payment schedule to implement a lower annual percentage rate would be a shortening of the maturity, or a reduction in the payment amount or the number of payments of an obligation. The exception in §226.20(a)(2) does not apply if the maturity is lengthened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction.

*Paragraph 20(a)(3).*

1. *Court agreements.* This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements. (See the commentary to §226.2(a)(14) for a discussion of court-approved agreements that are not considered ''credit.'')

*Paragraph 20(a)(4).*

1. *Workout agreements.* A workout agreement is not a refinancing unless the annual percentage rate is increased or additional credit is advanced beyond amounts already accrued plus insurance premiums.

*Paragraph 20(a)(5).*

1. *Insurance renewal.* The renewal of optional insurance added to an existing credit transaction is not a refinancing, assuming that appropriate Truth in Lending disclosures were provided for the initial purchase of the insurance.

*Paragraph 20(b) Assumptions.*

1. *General definition.* An assumption as defined in §226.20(b) is a new transaction and new disclosures must be made to the subsequent consumer. An assumption under the regulation requires the following three elements:

- A residential mortgage transaction.
- An express acceptance of the subsequent consumer by the creditor.
- A written agreement.

The assumption of a nonexempt consumer credit obligation requires no disclosures unless all three elements are present. For example, an automobile dealer need not provide Truth in Lending disclosures to a customer who assumes an existing obligation secured by an automobile. However, a residential mortgage transaction with the elements described in §226.20(b) is an assumption that calls for new disclosures; the disclosures must be given whether or not the assumption is accompanied by changes in the terms of the obligation. (See comment 2(a)(24)–5 for a discussion of assumptions that are not considered residential mortgage transactions.)

2. *Existing residential mortgage transaction.* A transaction may be a residential mortgage transaction as to one consumer and not to the other consumer. In that case, the creditor must look to the assuming consumer in determining whether a residential mortgage transaction exists. To illustrate:

- The original consumer obtained a mortgage to purchase a home for vacation purposes. The loan was not a residential mortgage transaction as to that consumer. The mortgage is assumed by a consumer who will use the home as a principal dwelling. As to that consumer, the loan is a residential mortgage transaction. For purposes of §226.20(b), the assumed loan is an ''existing residential mortgage transaction'' requiring disclosures, if the other criteria for an assumption are met.

3. *Express agreement. Expressly agrees* means that the creditor's agreement must relate specifically to the new debtor and must unequivocally accept that debtor as a primary obligor. The following events are not construed to be express agreements between the creditor and the subsequent consumer:

- Approval of creditworthiness.
- Notification of a change in records.
- Mailing of a coupon book to the subsequent consumer.
- Acceptance of payments from the new consumer.

4. *Retention of original consumer*. The retention of the original consumer as an obligor in some capacity does not prevent the change from being an assumption, provided the new consumer becomes a primary obligor. But the mere addition of a guarantor to an obligation for which the original consumer remains primarily liable does not give rise to an assumption. However, if neither party is designated as the primary obligor but the creditor accepts payment from the subsequent consumer, an assumption exists for purposes of §226.20(b).

5. *Status of parties.* Section 226.20(b) applies only if the previous debtor was a consumer

and the obligation is assumed by another consumer. It does not apply, for example, when an individual takes over the obligation of a corporation.

6. *Disclosures.* For transactions that are assumptions within this provision, the creditor must make disclosures based on the ''remaining obligation.'' For example:

• The amount financed is the remaining principal balance plus any arrearages or other accrued charges from the original transaction.

• If the finance charge is computed from time to time by application of a percentage rate to an unpaid balance, in determining the amount of the finance charge and the annual percentage rate to be disclosed, the creditor should disregard any prepaid finance charges paid by the original obligor, but must include in the finance charge any prepaid finance charge imposed in connection with the assumption.

• If the creditor requires the assuming consumer to pay any charges as a condition of the assumption, those sums are prepaid finance charges as to that consumer, unless exempt from the finance charge under §226.4. If a transaction involves add-on or discount finance charges, the creditor may make abbreviated disclosures, as outlined in §226.20(b) (1) through (5). Creditors providing disclosures pursuant to this section for assumptions of variable-rate transactions secured by the consumer's principal dwelling with a term longer than one year need not provide new disclosures under §226.18(f)(2)(ii) or §226.19(b). In such transactions, a creditor may disclose the variable-rate feature solely in accordance with §226.18(f)(1).

7. *Abbreviated disclosures.* The abbreviated disclosures permitted for assumptions of transactions involving add-on or discount finance charges must be made clearly and conspicuously in writing in a form that the consumer may keep. However, the creditor need not comply with the segregation requirement of §226.17(a)(1). The terms *annual percentage rate* and *total of payments,* when disclosed according to §226.20(b) (4) and (5), are not subject to the description requirements of §226.18 (e) and (h). The term *annual percentage rate* disclosed under §226.20(b)(4) need not be more conspicuous than other disclosures.

*Paragraph 20(c) Variable-rate adjustments.*

1. *Timing of adjustment notices.* This section requires a creditor (or a subsequent holder) to provide certain disclosures in cases where an adjustment to the interest rate is made in a variable-rate transaction subject to §226.19(b). There are two timing rules, depending on whether payment changes accompany interest rate changes. A creditor is required to provide at least one notice each year during which interest rate adjustments have occurred without accompanying payment adjustments. For payment adjustments, a creditor must deliver or place in the mail notices to borrowers at least 25, but not more than 120, calendar days before a payment at a new level is due. The timing rules also apply to the notice required to be given in connection with the adjustment to the rate and payment that follows conversion of a transaction subject to §226.19(b) to a fixed-rate transaction. (In cases where an open-end account is converted to a closed-end transaction subject to §226.19(b), the requirements of this section do not apply until adjustments are made following conversion.)

2. *Exceptions.* Section 226.20(c) does not apply to ''shared-equity,'' ''shared-appreciation,'' or ''price level adjusted'' or similar mortgages.

3. *Basis of disclosures.* The disclosures required under this section shall reflect the terms of the parties' legal obligation, as required under §226.17(c)(1).

*Paragraph 20(c)(1).*

1. *Current and prior interest rates.* The requirements under this paragraph are satisfied by disclosing the interest rate used to compute the new adjusted payment amount (''current rate'') and the adjusted interest rate that was disclosed in the last adjustment notice, as well as all other interest rates applied to the transaction in the period since the last notice (''prior rates''). (If there has been no prior adjustment notice, the prior rates are the interest rate applicable to the transaction at consummation, as well as all other interest rates applied to the transaction in the period since consummation.) If no payment adjustment has been made in a year, the current rate is the new adjusted interest rate for the transaction, and the prior rates are the adjusted interest rate applicable to the loan at the time of the last adjustment notice, and all other rates applied to the transaction in the period between the current and last adjustment notices. In disclosing all other rates applied to the transaction during the period between notices, a creditor may disclose a range of the highest and lowest rates applied during that period.

*Paragraph 20(c)(2).*

1. *Current and prior index values.* This section requires disclosure of the index or formula values used to compute the current and prior interest rates disclosed in §226.20(c)(1). The creditor need not disclose the margin used in computing the rates. If the prior interest rate was not based on an index or formula value, the creditor also need not disclose the value of the index that would otherwise have been used to compute the prior interest rate.

*Paragraph 20(c)(3).*

1. *Unapplied index increases.* The requirement that the consumer receive information about the extent to which the creditor has foregone any increase in the interest rate is applicable only to those transactions permitting interest rate carryover. The amount of

increase that is foregone at an adjustment is the amount that, subject to rate caps, can be applied to future adjustments independently to increase, or offset decreases in, the rate that is determined according to the index or formula.

*Paragraph 20(c)(4).*

1. *Contractual effects of the adjustment.* The contractual effects of an interest rate adjustment must be disclosed including the payment due after the adjustment is made whether or not the payment has been adjusted. A contractual effect of a rate adjustment would include, for example, disclosure of any change in the term or maturity of the loan if the change resulted from the rate adjustment. In transactions where paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the amount of the adjusted payment must be disclosed if such payment has changed as a result of the rate adjustment. A statement of the loan balance also is required. The balance required to be disclosed is the balance on which the new adjusted payment is based. If no payment adjustment is disclosed in the notice, the balance disclosed should be the loan balance on which the payment disclosed under §226.20(c)(5) is based, if applicable, or the balance at the time the disclosure is prepared.

*Paragraph 20(c)(5).*

1. *Fully-amortizing payment.* This paragraph requires a disclosure only when negative amortization occurs as a result of the adjustment. A disclosure is not required simply because a loan calls for non-amortizing or partially amortizing payments. For example, in a transaction with a five-year term and payments based on a longer amortization schedule, and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor would not have to disclose the payment necessary to fully amortize the loan in the remainder of the five-year term. A disclosure is required, however, if the payment disclosed under §226.20(c)(4) is not sufficient to prevent negative amortization in the loan. The adjustment notice must state the payment required to prevent negative amortization. (This paragraph does not apply if the payment disclosed in §226.20(c)(4) is sufficient to prevent negative amortization in the loan but the final payment will be a different amount due to rounding.)

References

*Statute:* None.

*Other sections:* Section 226.2.

*Previous regulation:* Section 226.8(j) through (l), and Interpretation Sections 226.807, 226.811, 226.814, and 226.817.

*1981 changes:* While the previous regulation treated virtually any change in terms as a refinancing requiring new disclosures, this regulation limits refinancings to transactions in which the entire original obligation is extinguished and replaced by a new one. Redisclosure is no longer required for deferrals or extensions.

The assumption provision retains the substance of §226.8(k) and Interpretation §226.807 of the previous regulation, but limits its scope to residential mortgage transactions.

*Section 226.21—Treatment of Credit Balances*

*Paragraph 21(a).*

1. *Credit balance.* A credit balance arises whenever the creditor receives or holds funds in an account in excess of the total balance due from the consumer on that account. A balance might result, for example, from the debtor's paying off a loan by transmitting funds in excess of the total balance owed on the account, or from the early payoff of a loan entitling the consumer to a rebate of insurance premiums and finance charges. However, §226.21 does not determine whether the creditor in fact owes or holds sums for the consumer. For example, if a creditor has no obligation to rebate any portion of precomputed finance charges on prepayment, the consumer's early payoff would not create a credit balance with respect to those charges. Similarly, nothing in this provision interferes with any rights the creditor may have under the contract or under state law with respect to set-off, cross collateralization, or similar provisions.

2. *Total balance due.* The phrase *total balance due* refers to the total outstanding balance. Thus, this provision does not apply where the consumer has simply paid an amount in excess of the payment due for a given period.

3. *Timing of refund.* The creditor may also fulfill its obligation under this section by:

- Refunding any credit balance to the consumer immediately.
- Refunding any credit balance prior to a written request from the consumer.
- Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

*Paragraph 21(b).*

1. *Written requests—standing orders.* The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.

*Paragraph 21(c).*

1. *Good faith effort to refund.* The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the consumer's last known address or telephone number, or both.

2. *Good faith effort unsuccessful.* Section 226.21 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.

References

*Statute:* Section 165.

*Other sections:* None.

*Previous regulation:* None.

*1981 changes:* This section implements section 165 of the Act, which was expanded by the 1980 statutory amendments to apply to closed-end as well as open-end credit.

*Section 226.22—Determination of the Annual Percentage Rate*

*22(a) Accuracy of the annual percentage rate.*

*Paragraph 22(a)(1).*

1. *Calculation method.* The regulation recognizes both the actuarial method and the United States Rule Method (U.S. Rule) as measures of an exact annual percentage rate. Both methods yield the same annual percentage rate when payment intervals are equal. They differ in their treatment of unpaid accrued interest.

2. *Actuarial method.* When no payment is made, or when the payment is insufficient to pay the accumulated finance charge, the actuarial method requires that the unpaid finance charge be added to the amount financed and thereby capitalized. Interest is computed on interest since in succeeding periods the interest rate is applied to the unpaid balance including the unpaid finance charge. Appendix J provides instructions and examples for calculating the annual percentage rate using the actuarial method.

3. *U.S. Rule.* The U.S. Rule produces no compounding of interest in that any unpaid accrued interest is accumulated separately and is not added to principal. In addition, under the U.S. Rule, no interest calculation is made until a payment is received.

4. *Basis for calculations.* When a transaction involves ''step rates'' or ''split rates''—that is, different rates applied at different times or to different portions of the principal balance—a single composite annual percentage rate must be calculated and disclosed for the entire transaction. Assume, for example, a step-rate transaction in which a $10,000 loan is repayable in 5 years at 10 percent interest for the first 2 years, 12 percent for years 3 and 4, and 14 percent for year 5. The monthly payments are $210.71 during the first 2 years of the term, $220.25 for years 3 and 4, and $222.59 for year 5. The composite annual percentage rate, using a calculator with a ''discounted cash flow analysis'' or ''internal rate of return'' function, is 10.75 percent.

5. *Good faith reliance on faulty calculation tools.* Footnote 45d absolves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the footnote is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

*Paragraph 22(a)(2).*

1. *Regular transactions.* The annual percentage rate for a regular transaction is considered accurate if it varies in either direction by not more than ⅛ of 1 percentage point from the actual annual percentage rate. For example, when the exact annual percentage rate is determined to be 10⅛%, a disclosed annual percentage rate from 10% to 10¼%, or the decimal equivalent, is deemed to comply with the regulation.

*Paragraph 22(a)(3).*

1. *Irregular transactions.* The annual percentage rate for an irregular transaction is considered accurate if it varies in either direction by not more than ¼ of 1 percentage point from the actual annual percentage rate. This tolerance is intended for more complex transactions that do not call for a single advance and a regular series of equal payments at equal intervals. The ¼ of 1 percentage point tolerance may be used, for example, in a construction loan where advances are made as construction progresses, or in a transaction where payments vary to reflect the consumer's seasonal income. It may also be used in transactions with graduated payment schedules where the contract commits the consumer to several series of payments in different amounts. It does not apply, however, to loans with variable rate features where the initial disclosures are based on a regular amortization schedule over the life of the loan, even though payments may later change because of the variable rate feature.

*22(a)(4) Mortgage loans.*

1. *Example.* If a creditor improperly omits a $75 fee from the finance charge on a regular transaction, the understated finance charge is considered accurate under §226.18(d)(1), and the annual percentage rate corresponding to that understated finance charge also is considered accurate even if it falls outside the tolerance of ⅛ of 1 percentage point provided under §226.22(a)(2). Because a $75 error was made, an annual percentage rate corresponding to a $100 understatement of the finance charge would not be considered accurate.

*22(a)(5) Additional tolerance for mortgage loans.*

1. *Example.* This paragraph contains an additional tolerance for a disclosed annual percentage rate that is incorrect but is closer to the actual annual percentage rate than the rate that would be considered accurate under the tolerance in § 226.22(a)(4). To illustrate: in an irregular transaction subject to a ¼ of 1 percentage point tolerance, if the actual annual percentage rate is 9.00 percent and a $75 omission from the finance charge corresponds to a rate of 8.50 percent that is considered accurate under § 226.22(a)(4), a disclosed APR of 8.65 percent is within the tolerance in § 226.22(a)(5). In this example of an understated finance charge, a disclosed annual percentage rate below 8.50 or above 9.25 percent will not be considered accurate.

*22(b) Computation tools.*

*Paragraph 22(b)(1).*

1. *Board tables.* Volumes I and II of the Board's Annual Percentage Rate Tables provide a means of calculating annual percentage rates for regular and irregular transactions, respectively. An annual percentage rate computed in accordance with the instructions in the tables is deemed to comply with the regulation, even where use of the tables produces a rate that falls outside the general standard of accuracy. To illustrate:

• Volume I may be used for single advance transactions with completely regular payment schedules or with payment schedules that are regular except for an odd first payment, odd first period or odd final payment. When used for a transaction with a large final balloon payment, Volume I may produce a rate that is considerably higher than the exact rate produced using a computer program based directly on appendix J. However, the Volume I rate—produced using certain adjustments in that volume—is considered to be in compliance.

*Paragraph 22(b)(2).*

1. *Other calculation tools.* Creditors need not use the Board tables in calculating the annual percentage rates. Any computation tools may be used, so long as they produce annual percentage rates within ⅛ or ¼ of 1 percentage point, as applicable, of the precise actuarial or U.S. Rule annual percentage rate.

*22(c) Single add-on rate transactions.*

1. *General rule.* Creditors applying a single add-on rate to all transactions up to 60 months in length may disclose the same annual percentage rate for all those transactions, although the actual annual percentage rate varies according to the length of the transaction. Creditors utilizing this provision must show the highest of those rates. For example:

• An add-on rate of 10 percent converted to an annual percentage rate produce the following actual annual percentage rates at various maturities: at 3 months, 14.94 percent; at 21 months, 18.18 percent; and at 60 months, 17.27 percent. The creditor must disclose an annual percentage rate of 18.18 percent (the highest annual percentage rate) for any transaction up to 5 years, even though that rate is precise only for a transaction of 21 months.

*22(d) Certain transactions involving ranges of balances.*

1. *General rule.* Creditors applying a fixed dollar finance charge to all balances within a specified range of balances may understate the annual percentage rate by up to 8 percent of that rate, by disclosing for all those balances the annual percentage rate computed on the median balance within that range. For example:

• If a finance charge of $9 applies to all balances between $91 and $100, an annual percentage rate of 10 percent (the rate on the median balance) may be disclosed as the annual percentage rate for all balances, even though a $9 finance charge applied to the lowest balance ($91) would actually produce an annual percentage rate of 10.7 percent.

References

*Statute:* Section 107.

*Other sections:* Section 226.17(c)(4) and appendix J.

*Previous regulation: Section 226.5(b) through (e).*

*1981 changes:* The section now provides a larger tolerance (¼ of 1 percentage point) for irregular transactions.

*Section 226.23—Right of Rescission*

1. *Transactions not covered.* Credit extensions that are not subject to the regulation are not covered by § 226.23 even if a customer's principal dwelling is the collateral securing the credit. For example, the right of rescission does not apply to a business purpose loan, even though the loan is secured by the customer's principal dwelling.

*23(a) Consumer's right to rescind.*

*Paragraph 23(a)(1).*

1. *Security interest arising from transaction.* In order for the right of rescission to apply, the security interest must be retained as part of the credit transaction. For example:

• A security interest that is acquired by a contractor who is also extending the credit in the transaction.

• A mechanic's or materialman's lien that is retained by a subcontractor or supplier of the contractor-creditor, even when the latter has waived its own security interest in the consumer's home.

The security interest is not part of the credit transaction and therefore the transaction is not subject to the right of rescission when, for example:

- A mechanic's or materialman's lien is obtained by a contractor who is not a party to the credit transaction but is merely paid with the proceeds of the consumer's unsecured bank loan.
- All security interests that may arise in connection with the credit transaction are validly waived.
- The creditor obtains a lien and completion bond that in effect satisfies all liens against the consumer's principal dwelling as a result of the credit transaction.

Although liens arising by operation of law are not considered security interests for purposes of disclosure under §226.2, that section specifically includes them in the definition for purposes of the right of rescission. Thus, even though an interest in the consumer's principal dwelling is not a required disclosure under §226.18(m), it may still give rise to the right of rescission.

2. *Consumer.* To be a consumer within the meaning of §226.2, that person must at least have an ownership interest in the dwelling that is encumbered by the creditor's security interest, although that person need not be a signatory to the credit agreement. For example, if only one spouse signs a credit contract, the other spouse is a consumer if the ownership interest of that spouse is subject to the security interest.

3. *Principal dwelling.* A consumer can only have one principal dwelling at a time. (But see comment 23(a)(1)–4.) A vacation or other second home would not be a principal dwelling. A transaction secured by a second home (such as a vacation home) that is not currently being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling if it secures the acquisition or construction loan. In that case, the transaction secured by the new dwelling is a residential mortgage transaction and is not rescindable. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a construction loan to finance B and secured by B is a residential mortgage transaction. Dwelling, as defined in §226.2, includes structures that are classified as personalty under state law. For example, a transaction secured by a mobile home, trailer, or houseboat used as the consumer's principal dwelling may be rescindable.

4. *Special rule for principal dwelling.* Notwithstanding the general rule that consumers may have only one principal dwelling, when the consumer is acquiring or constructing a new principal dwelling, any loan subject to Regulation Z and secured by the equity in the consumer's current principal dwelling (for example, a bridge loan) is subject to the right of rescission regardless of the purpose of that loan. For example, if a consumer whose principal dwelling is currently A builds B, to be occupied by the consumer upon completion of construction, a construction loan to finance B and secured by A is subject to the right of rescission. A loan secured by both A and B is, likewise, rescindable.

5. *Addition of a security interest.* Under footnote 47, the addition of a security interest in a consumer's principal dwelling to an existing obligation is rescindable even if the existing obligation is not satisfied and replaced by a new obligation, and even if the existing obligation was previously exempt (because it was credit over $25,000 not secured by real property or a consumer's principal dwelling). The right of rescission applies only to the added security interest, however, and not to the original obligation. In those situations, only the §226.23(b) notice need be delivered, not new material disclosures; the rescission period will begin to run from the delivery of the notice.

*Paragraph 23(a)(2).*

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under §226.23(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under §226.23(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under §226.23(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivering notification to the person or address to which the consumer has been directed to send, payments constitutes delivery to the creditor or assignee. State law determines whether delivery of the notification to a third party other than the person to whom payments are made is delivery to the creditor or assignee, in the case where the creditor fails to designate an address for sending the notification of rescission.

*Paragraph 23(a)(3).*

1. *Rescission period.* The period within which the consumer may exercise the right to rescind runs for 3 business days from the last of 3 events:

- Consummation of the transaction.
- Delivery of all material disclosures.
- Delivery to the consumer of the required rescission notice.

For example, if a transaction is consummated on Friday, June 1, and the disclosures and notice of the right to rescind were given on Thursday, May 31, the rescission period will expire at midnight of the third business day after June 1—that is, Tuesday, June 5. In another example, if the disclosures are given and the transaction consummated on Friday, June 1, and the rescission notice is given on Monday, June 4, the rescission period expires at midnight of the third business day after June 4—that is, Thursday, June 7. The consumer must place the rescission notice in the mail, file it for telegraphic transmission, or deliver it to the creditor's place of business within that period in order to exercise the right.

2. *Material disclosures.* Footnote 48 sets forth the material disclosures that must be provided before the rescission period can begin to run. Failure to provide information regarding the annual pecentage rate also includes failure to inform the consumer of the existence of a variable rate feature. Failure to give the other required disclosures does not prevent the running of the rescission period, although that failure may result in civil liability or administrative sanctions.

3. *Unexpired right of rescission.* When the creditor has failed to take the action necessary to start the three-business day rescission period running, the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

- The expiration of three years after consummation of the transaction.
- Transfer of all the consumer's interest in the property.
- Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract.

Transfer of all the consumers' interest includes such transfers as bequests and gifts. A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the Act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of this section. A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.

*Paragraph 23(a)(4).*

1. *Joint owners.* When more than one consumer has the right to rescind a transaction, any of them may exercise that right and cancel the transaction on behalf of all. For example, if both husband and wife have the right to rescind a transaction, either spouse acting alone may exercise the right and both are bound by the rescission.

*23(b) Notice of right to rescind.*

1. *Who receives notice.* Each consumer entitled to rescind must be given:

- Two copies of the rescission notice.
- The material disclosures.

In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive 2 copies of the rescission notice and one copy of the disclosures. If e-mail is used, the creditor complies with §226.23(b)(1) if one notice is sent to each co-owner. Each co-owner must consent to receive electronic disclosures and each must designate an electronic address for receiving the disclosure.

2. *Format.* The notice must be on a separate piece of paper, but may appear with other information such as the itemization of the amount financed. The material must be clear and conspicuous, but no minimum type size or other technical requirements are imposed. The notices in appendix H provide models that creditors may use in giving the notice.

3. *Content.* The notice must include all of the information outlined in Section 226.23(b)(1)(i) through (v). The requirement in §226.23(b) that the transaction be identified may be met by providing the date of the transaction. The creditor may provide a separate form that the consumer may use to exercise the right of rescission, or that form may be combined with the other rescission disclosures, as illustrated in appendix H. The notice may include additional information related to the required information, such as:

- A description of the property subject to the security interest.
- A statement that joint owners may have the right to rescind and that a rescission by one is effective for all.
- The name and address of an agent of the creditor to receive notice of rescission.

4. *Time of providing notice.* The notice required by §226.23(b) need not be given before consummation of the transaction. The creditor may deliver the notice after the transaction is consummated, but the rescission period will not begin to run until the notice is given. For example, if the creditor provides the notice on May 15, but disclosures were given and the transaction was consummated on May 10, the 3-business day rescission period will run from May 15.

*23(c) Delay of creditor's performance.*

1. *General rule.* Until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party:

- Disburse loan proceeds to the consumer.
- Begin performing services for the consumer.
- Deliver materials to the consumer.

2. *Escrow.* The creditor may disburse loan proceeds during the rescission period in a valid escrow arrangement. The creditor may

not, however, appoint the consumer as ''trustee'' or ''escrow agent'' and distribute funds to the consumer in that capacity during the delay period.

3. *Actions during the delay period.* Section 226.23(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. Unless otherwise prohibited, such as by state law, the creditor may, for example:

- Prepare the loan check.
- Perfect the security interest.
- Prepare to discount or assign the contract to a third party.
- Accrue finance charges during the delay period.

4. *Delay beyond rescission period.* The creditor must wait until it is reasonably satisfied that the consumer has not rescinded. For example, the creditor may satisfy itself by doing one of the following:

- Waiting a reasonable time after expiration of the rescission period to allow for delivery of a mailed notice.
- Obtaining a written statement from the consumer that the right has not been exercised.

When more than one consumer has the right to rescind, the creditor cannot reasonably rely on the assurance of only one consumer, because other consumers may exercise the right.

*23(d) Effects of rescission.*

*Paragraph 23(d)(1).*

1. *Termination of security interest.* Any security interest giving rise to the right of rescission becomes void when the consumer exercises the right of rescission. The security interest is automatically negated regardless of its status and whether or not it was recorded or perfected. Under §226.23(d)(2), however, the creditor must take any action necessary to reflect the fact that the security interest no longer exists.

*Paragraph 23(d)(2).*

1. *Refunds to consumer.* The consumer cannot be required to pay any amount in the form of money or property either to the creditor or to a third party as part of the credit transaction. Any amounts of this nature already paid by the consumer must be refunded. ''Any amount'' includes finance charges already accrued, as well as other charges, such as broker fees, application and commitment fees, or fees for a title search or appraisal, whether paid to the creditor, paid directly to a third party, or passed on from the creditor to the third party. It is irrelevant that these amounts may not represent profit to the creditor.

2. *Amounts not refundable to consumer.* Creditors need not return any money given by the consumer to a third party outside of the credit transaction, such as costs incurred for a building permit or for a zoning variance. Similarly, the term *any amount* does not apply to any money or property given by the creditor to the consumer; those amounts must be tendered by the consumer to the creditor under §226.23(d)(3).

3. *Reflection of security interest termination.* The creditor must take whatever steps are necessary to indicate that the security interest is terminated. Those steps include the cancellation of documents creating the security interest, and the filing of release or termination statements in the public record. In a transaction involving subcontractors or suppliers that also hold security interests related to the credit transaction, the creditor must insure that the termination of their security interests is also reflected. The 20-day period for the creditor's action refers to the time within which the creditor must begin the process. It does not require all necessary steps to have been completed within that time, but the creditor is responsible for seeing the process through to completion.

*Paragraph 23(d)(3).*

1. *Property exchange.* Once the creditor has fulfilled its obligations under §226.23(d)(2), the consumer must tender to the creditor any property or money the creditor has already delivered to the consumer. At the consumer's option, property may be tendered at the location of the property. For example, if lumber or fixtures have been delivered to the consumer's home, the consumer may tender them to the creditor by making them available for pick-up at the home, rather than physically returning them to the creditor's premises. Money already given to the consumer *must* be tendered at the creditor's place of business.

2. *Reasonable value.* If returning the property would be extremely burdensome to the consumer, the consumer may offer the creditor its reasonable value rather than returning the property itself. For example, if building materials have already been incorporated into the consumer's dwelling, the consumer may pay their reasonable value.

*Paragraph 23(d)(4).*

1. *Modifications.* The procedures outlined in §226.23(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The sequence of procedures under §226.23(d)(2) and (3), or a court's modification of those procedures under §226.23(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.

*23(e) Consumer's waiver of right to rescind.*

1. *Need for waiver.* To waive the right to rescind, the consumer must have a bona fide personal financial emergency that must be met before the end of the rescission period. The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission.

2. *Procedure.* To waive or modify the right to rescind, the consumer must give a written statement that specifically waives or modifies the right, and also includes a brief description of the emergency. Each consumer entitled to rescind must sign the waiver statement. In a transaction involving multiple consumers, such as a husband and wife using their home as collateral, the waiver must bear the signatures of both spouses.

*23(f) Exempt transactions.*

1. *Residential mortgage transaction.* Any transaction to construct or acquire a principal dwelling, whether considered real or personal property, is exempt. (See the commentary to §226.23(a).) For example, a credit transaction to acquire a mobile home or houseboat to be used as the consumer's principal dwelling would not be rescindable.

2. *Lien status.* The lien status of the mortgage is irrelevant for purposes of the exemption in §226.23(f)(1); the fact that a loan has junior lien status does not by itself preclude application of this exemption. For example, a home buyer may assume the existing first mortgage and create a second mortgage to finance the balance of the purchase price. Such a transaction would not be rescindable.

3. *Combined-purpose transaction.* A loan to acquire a principal dwelling and make improvements to that dwelling is exempt if treated as one transaction. If, on the other hand, the loan for the acquisition of the principal dwelling and the subsequent advances for improvements are treated as more than one transaction, then only the transaction that finances the acquisition of that dwelling is exempt.

4. *New advances.* The exemption in §226.23(f)(2) applies only to refinancings (including consolidations) by the original creditor. The original creditor is the creditor to whom the written agreement was initially made payable. In a merger, consolidation or acquisition, the successor institution is considered the original creditor for purposes of the exemption in §226.23(f)(2). If the refinancing involves a new advance of money, the amount of the new advance is rescindable. In determining whether there is a new advance, a creditor may rely on the amount financed, refinancing costs, and other figures stated in the latest Truth in Lending disclosures provided to the consumer and is not required to use, for example, more precise information that may only become available when the loan is closed. For purposes of the right of rescission, a new advance does not include amounts attributed solely to the costs of the refinancing. These amounts would include §226.4(c)(7) charges (such as attorneys fees and title examination and insurance fees, if bona fide and reasonable in amount), as well as insurance premiums and other charges that are not finance charges. (Finance charges on the new transaction—points, for example—would not be considered in determining whether there is a new advance of money in a refinancing since finance charges are not part of the amount financed.) To illustrate, if the sum of the outstanding principal balance plus the earned unpaid finance charge is $50,000 and the new amount financed is $51,000, then the refinancing would be exempt if the extra $1,000 is attributed solely to costs financed in connection with the refinancing that are not finance charges. Of course, if new advances of money are made (for example, to pay for home improvements) and the consumer exercises the right of rescission, the consumer must be placed in the same position as he or she was in prior to entering into the new credit transaction. Thus, all amounts of money (which would include all the costs of the refinancing) already paid by the consumer to the creditor or to a third party as part of the refinancing would have to be refunded to the consumer. (See the commentary to §226.23(d)(2) for a discussion of refunds to consumers.) A model rescission notice applicable to transactions involving new advances appears in appendix H. The general rescission notice (model form H–8) is the appropriate form for use by creditors not considered original creditors in refinancing transactions.

5. *State creditors.* Cities and other political subdivisions of states acting as creditors are not exempted from this section.

6. *Multiple advances.* Just as new disclosures need not be made for subsequent advances when treated as one transaction, no new rescission rights arise so long as the appropriate notice and disclosures are given at the outset of the transaction. For example, the creditor extends credit for home improvements secured by the consumer's principal dwelling, with advances made as repairs progress. As permitted by §226.17(c)(6), the creditor makes a single set of disclosures at the beginning of the construction period, rather than separate disclosures for each advance. The right of rescission does not arise with each advance. However, if the advances are treated as separate transactions, the right of rescission applies to each advance.

7. *Spreader clauses.* When the creditor holds a mortgage or deed of trust on the consumer's principal dwelling and that mortgage or deed of trust contains a ''spreader clause,'' subsequent loans made are separate transactions and are subject to the right of

rescission. Those loans are rescindable unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent transactions.

8. *Converting open-end to closed-end credit.* Under certain state laws, consummation of a closed-end credit transaction may occur at the time a consumer enters into the intitial open-end credit agreement. As provided in the commentary to § 226.17(b), closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction. In accounts secured by the consumer's principal dwelling, no new right of rescission arises at the time of conversion. Rescission rights under § 226.15 are unaffected.

*23(g) Tolerances for accuracy.*

*23(g)(2) One percent tolerance.*

1. *New advance.* The phrase ''new advance'' has the same meaning as in comment 23(f)–4.

*23(h) Special Rules for Foreclosures.*

1. *Rescission.* Section 226.23(h) applies only to transactions that are subject to rescission under § 226.23(a)(1).

*Paragraph 23(h)(1)(i).*

1. *Mortgage broker fees.* A consumer may rescind a loan in foreclosure if a mortgage broker fee that should have been included in the finance charge was omitted, without regard to the dollar amount involved. If the amount of the mortgage broker fee is included but misstated the rule in § 226.23(h)(2) applies.

*23(h)(2) Tolerance for disclosures.*

1. *General.* This section is based on the accuracy of the total finance charge rather than its component charges.

References

*Statute:* Sections 113, 125, and 130.

*Other sections:* Section 226.2 and appendix H.

*Previous regulation:* Section 226.9.

*1981 changes:* The right to rescind applies not only to real property used as the consumer's principal dwelling, but to personal property as well. The regulation provides no specific text or format for the notice of the right to rescind.

*Section 226.24—Advertising*

1. *Clear and conspicuous standard.* This section is subject to the general ''clear and conspicous'' standard for this subpart but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisment. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.

*24(a) Actually available terms.*

1. *General rule.* To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. This provision is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.

*24(b) Advertisment of rate of finance charge.*

1. *Annual percentage rate.* Advertised rates must be stated in terms of an *annual percentage rate,* as defined in § 226.22. Even though state or local law permits the use of add-on, discount, time-price differential, or other methods of stating rates, advertisements must state them as annual percentage rates. Unlike the transactional disclosure of an annual percentage rate under § 226.18(e), the advertised annual percentage rate need not include a descriptive explanation of the term and may be expressed using the abbreviation *APR.* The advertisement must state that the rate is subject to increase after consummation if that is the case, but the advertisement need not describe the rate increase, its limits, or how it would affect the payment schedule. As under § 226.18(f), relating to disclosure of a variable rate, the rate increase disclosure requirement in this provision does not apply to any rate increase due to delinquency (including late payment), default, acceleration, assumption, or transfer of collateral.

2. *Simple or periodic rates.* The advertisement may not simultaneously state any other rate, except that a simple annual rate or periodic rate applicable to an unpaid balance may appear along with (but not more conspicuously than) the annual percentage rate. For example:

- In an advertisement for real estate, a simple interest rate may be shown in the same type size as the annual percentage rate for the advertised credit.

3. *Buydowns.* When a third party (such as a seller) or a creditor wishes to promote the availability of reduced interest rates (consumer or seller buydowns), the advertised annual percentage rate must be determined in accordance with the rules in the commentary to § 226.17(c) regarding the basis of transactional disclosures for buydowns. The seller or creditor may advertise the reduced simple interest rate, provided the advertisement shows the limited term to which the reduced rate applies and states the simple interest rate applicable to the balance of the term. The advertisement may also show the

effect of the buydown agreement on the payment schedule for the buydown period without triggering the additional disclosures under §226.24(c)(2). For example, the advertisement may state that "with this buydown arrangement, your monthly payments for the first 3 years of the mortgage term will be only $350" or "this buydown arrangement will reduce your monthly payments for the first 3 years of the mortgage term by $150."

4. *Effective rates.* In some transactions the consumer's payments may be based upon an interest rate lower than the rate at which interest is accruing. The lower rate may be referred to as the effective rate, payment rate or qualifying rate. A creditor or seller may advertise such rates by stating: The term of the reduced payment schedule, the interest rate upon which the reduced payments are calculated, the rate at which the interest is in fact accruing, and the annual percentage rate. The advertised annual percentage rate that must accompany this rate must take into account the interest that will accrue but will not be paid during this period. For example, an advertisement may state "An effective first year interest rate of 10 percent. Interest being earned at 14 percent. Annual percentage rate 15 percent."

5. *Discounted variable-rate transactions.* The advertised annual percentage rate for discounted variable-rate transactions must be determined in accordance with comment 17(c)(1)–10 regarding the basis of transactional disclosures for such financing. A creditor or seller may promote the availability of the initial rate reduction in such transactions by advertising the reduced initial rate, provided the advertisement shows the limited term to which the reduced rate applies.

• Limits or caps on periodic rate or payment adjustments need not be stated. To illustrate using the second example in comment 17(c)(1)–10, the fact that the rate is presumed to be 11 percent in the second year and 12 percent for the remaining 28 years need not be included in the advertisement.

• The advertisement may also show the effect of the discount on the payment schedule for the discount period without triggering the additional disclosures under §226.24(c). For example, the advertisement may state that "with this discount, your monthly payments for the first year of the mortgage term will be only $577" or "this discount will reduce your monthly payments for the first year of the mortgage term by $223."

6. *Electronic communication.* A simple annual rate or periodic rate that is applied to an unpaid balance may be stated only if it is provided in conjunction with an annual percentage rate. In an advertisement using electronic communication, the consumer must be able to view both rates simultaneously. This requirement is not satisfied if the consumer can view annual percentage rate only by use of a link that takes the consumer to information appearing at another location.

*24(c) Advertisement of terms that require additional disclosures.*

1. *General rule.* Under §226.24(c)(1), whenever certain triggering terms appear in credit advertisements, the additional credit terms enumerated in §226.24(c)(2) must also appear. These provisions apply even if the triggering term is not stated explicitly, but may be readily determined from the advertisement. For example, an advertisement may state "80% financing available," which is in fact indicating that a 20% downpayment is required.

*Paragraph 24(c)(1).*

1. *Downpayment.* The dollar amount of a downpayment or a statement of the downpayment as a percentage of the price requires further information. By virtue of the definition of *downpayment* in §226.2, this triggering term is limited to credit sale transactions. It includes such statements as:

• *Only 5% down.*

• *As low as $100 down.*

• *Total move-in costs of $800.*

This provision applies only if a downpayment is actually required; statements such as *no downpayment* or *no trade-in required* do not trigger the additional disclosures under this paragraph.

2. *Payment period.* The number of payments required or the total period of repayment includes such statements as:

• *48-month payment terms.*

• *30-year mortgage.*

• *Repayment in as many as 36 monthly installments.*

But it does not include such statements as "pay weekly," "monthly payment terms arranged," or "take years to repay," since these statements do not indicate a time period over which a loan may be financed.

3. *Payment amount.* The dollar amount of any payment includes statements such as:

• "Payable in installments of $103."

• "$25 weekly."

• "$1,200 balance payable in 10 equal installments."

In the last example, the amount of each payment is readily determinable, even though not explicitly stated. But statements such as "monthly payments to suit your needs" or "regular monthly payments" are not covered.

4. *Finance charge.* The dollar amount of the finance charge or any portion of it includes statements such as:

• "$500 total cost of credit."

• "$2 monthly carrying charge."

• "$50,000 mortgages, 2 points to the borrower."

In the last example, the $1,000 prepaid finance charge can be readily determined from the information given. Statements of the annual percentage rate or statements that there is no particular charge for credit (such as ''no closing costs'') are not triggering terms under this paragraph.

*Paragraph 24(c)(2).*

1. *Disclosure of downpayment.* The total downpayment as a dollar amount or percentage must be shown, but the word ''downpayment'' need not be used in making this disclosure. For example, ''10% cash required from buyer'' or ''credit terms require minimum $100 trade-in'' would suffice.

2. *Disclosure of repayment terms.* While the phrase *terms of repayment* generally has the same meaning as the *payment schedule* required to be disclosed under §226.18(g), §226.24(c)(2)(ii) provides greater flexibility to creditors in making this disclosure for advertising purposes. Repayment terms may be expressed in a variety of ways in addition to an exact repayment schedule; this is particularly true for advertisements that do not contemplate a single specific transaction. For example:

• A creditor may use a unit-cost approach in making the required disclosure, such as ''48 monthly payments of $27.83 per $1,000 borrowed.''

• In an advertisement for credit secured by a dwelling, when any series of payments varies because of a graduated payment feature or because of the inclusion of mortgage insurance premiums, a creditor may state the number and timing of payments, the amounts of the largest and smallest of those payments, and the fact that other payments will vary between those amounts.

3. *Annual percentage rate.* The advertised annual percentage rate may be expressed using the abbreviation ''APR.'' The advertisement must also state, if applicable, that the annual percentage rate is subject to increase after consummation.

4. *Use of examples.* Footnote 49 authorizes the use of illustrative credit transactions to make the necessary disclosures under §226.24(c)(2). That is, where a range of possible combinations of credit terms is offered, the advertisement may use examples of typical transactions, so long as each example contains all of the applicable terms required by §226.24(c). The examples must be labelled as such and must reflect representative credit terms that are made available by the creditor to present and prospective customers.

*24(d) Catalogs or Other Multiple-page Advertisements; Electronic Advertisements*

1. *Definition.* The multiple-page advertisements to which this section refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of §226.24(d).

2. *General.* Section 226.24(d) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement, or in an electronic advertisement. The rule applies only if the advertisement contains one or more of the triggering terms from §226.24(c)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under §226.24(c)(2) and so is not covered by §226.24(d).

3. *Representative examples.* The table or schedule must state all the necessary information for a representative sampling of amounts of credit. This must reflect amounts of credit the creditor actually offers, up to and including the higher-priced items. This does not mean that the chart must make the disclosures for the single most expensive item the seller offers, but only that the chart cannot be limited to information about less expensive sales when the seller commonly offers a distinct level of more expensive goods or services. The range of transactions shown in the table or schedule in a particular catalog or multiple-page advertisement need not exceed the range of transactions actually offered in that advertisement.

4. *Electronic communication.* If an advertisement using electronic communication contains the table or schedule permitted under §226.24(d)(1), any statement of terms set forth in §226.24(c)(1) appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information (but see comment 24(b)–6).

References

*Statute:* Sections 141, 142, and 144.

*Other sections:* Sections 226.2, 226.4, and 226.22.

*Previous regulation:* Section 226.10 (a), (b), and (d).

*1981 changes:* This section retains the advertising rules in a form very similar to the previous regulation, but with certain changes to reflect the 1980 statutory amendments. For example, if triggering terms appear in any advertisement, the additional disclosures required no longer include the cash price. The special rule for FHA section 235 financing has been eliminated, as well as the rule for advertising credit payable in more than four installments with no identified finance charge. Interpretation §226.1002, requiring disclosure of representative amounts of credit in catalogs and multiple-page advertisements, has been incorporated in simplified form in §226.24(d).

Unlike the previous regulation, if the advertised annual percentage rate is subject to increase, that fact must now be disclosed.

SUBPART D—MISCELLANEOUS

*Section 226.25—Record Retention*

*25(a) General rule.*

1. *Evidence of required actions.* The creditor must retain evidence that it performed the required actions as well as made the required disclosures. This includes, for example, evidence that the creditor properly handled adverse credit reports in connection with amounts subject to a billing dispute under §226.13, and properly handled the refunding of credit balances under §§226.11 and 226.21.

2. *Methods of retaining evidence.* Adequate evidence of compliance does not necessarily mean actual paper copies of disclosure statements or other business records. The evidence may be retained on microfilm, microfiche, or by any other method that reproduces records accurately (including computer programs). The creditor need retain only enough information to reconstruct the required disclosures or other records. Thus, for example, the creditor need not retain each open-end periodic statement, so long as the specific information on each statement can be retrieved.

3. *Certain variable-rate transactions.* In variable-rate transactions that are subject to the disclosure requirements of §226.19(b), written procedures for compliance with those requirements as well as a sample disclosure form for each loan program represent adequate evidence of compliance. (See comment 25(a)–2 pertaining to permissible methods of retaining the required disclosures.)

4. *Home equity plans.* In home equity plans that are subject to the requirements of §226.5b, written procedures for compliance with those requirements as well as a sample disclosure form and contract for each home equity program represent adequate evidence of compliance. (See comment 25(a)–2 pertaining to permissible methods of retaining the required disclosures.)

References

*Statute:* Sections 105 and 108.

*Other sections:* Appendix I.

*Previous regulation:* Section 226.6(i).

*1981 changes:* Section 226.25 substitutes a uniform 2-year record-retention rule for the previous requirement that certain creditors retain records through at least one compliance examination. It also states more explicitly that the record-retention requirements apply to evidence of required actions.

*Section 226.26—Use of Annual Percentage Rate in Oral Disclosures*

1. *Application of rules.* The restrictions of §226.26 apply only if the creditor chooses to respond orally to the consumer's request for credit cost information. Nothing in the regulation requires the creditor to supply rate information orally. If the creditor volunteers information (including rate information) through oral solicitations directed generally to prospective customers, as through a telephone solicitation, those communications may be advertisements subject to the rules in §§226.16 and 226.24.

*26(a) Open-end credit.*

1. *Information that may be given.* The creditor may state periodic rates in addition to the required annual percentage rate, but it need not do so. If the annual percentage rate is unknown because transaction charges, loan fees, or similar finance charges may be imposed, the creditor must give the corresponding annual percentage rate (that is, the periodic rate multiplied by the number of periods in a year, as described in §§226.6(a)(2) and 226.7(d)). In such cases, the creditor may, but need not, also give the consumer information about other finance charges and other charges.

*26(b) Closed-end credit.*

1. *Information that may be given.* The creditor may state other annual or periodic rates that are applied to an unpaid balance, along with the required annual percentage rate. This rule permits disclosure of a simple interest rate, for example, but not an add-on, discount, or similar rate. If the creditor cannot give a precise annual percentage rate in its oral response because of variables in the transaction, it must give the annual percentage rate for a comparable sample transaction; in this case, other cost information may, but need not, be given. For example, the creditor may be unable to state a precise annual percentage rate for a mortgage loan without knowing the exact amount to be financed, the amount of loan fees or mortgage insurance premiums, or similar factors. In this situation, the creditor should state an annual percentage rate for a sample transaction; it may also provide information about the consumer's specific case, such as the contract interest rate, points, other finance charges, and other charges.

References

*Statute:* Section 146.

*Other sections:* Sections 226.6(a)(2) and 226.7(d).

*Previous regulation:* Interpretation §226.101.

*1981 changes:* This section implements amended section 146 of the Act, which added a provision dealing with oral disclosures, and incorporates Interpretation §226.101.

*Section 226.27—Language of Disclosures*

1. *Subsequent disclosures.* If a creditor provides initial disclosures in a language other than English, subsequent disclosures need not be in that other language. For example,

if the creditor gave Spanish-language initial disclosures, periodic statements and change-in-terms notices may be made in English.

2. [Reserved]

References

*Statute:* None.
*Other sections:* None.
*Previous regulation:* Section 226.6(a).
*1981 changes:* No substantive change.

*Section 226.28—Effect on State Laws*

*28(a) Inconsistent disclosure requirements*

1. *General.* There are 3 sets of preemption criteria: 1 applies to the general disclosure and advertising rules of the regulation, and 2 apply to the credit billing provisions. Section 226.28 also provides for Board determinations of preemption.

2. *Rules for chapters 1, 2, and 3.* The standard for judging whether State laws that cover the types of requirements in chapters 1 (General provisions), 2 (Credit transactions), and 3 (Credit advertising) of the Act are inconsistent and therefore preempted, is contradiction of the Federal law. Examples of laws that would be preempted include:

• A State law that requires use of the term *finance charge,* but defines the term to include fees that the Federal law excludes, or to exclude fees the Federal law includes.

• A State law that requires a label such as *nominal annual interest rate* to be used for what the Federal law calls the *annual percentage rate.*

3. *Laws not contradictory to chapters 1, 2, and 3.* Generally, State law requirements that call for the disclosure of items of information not covered by the Federal law, or that require more detailed disclosures, do not contradict the Federal requirements. Examples of laws that are not preempted include:

• A State law that requires disclosure of the minimum periodic payment for open-end credit, even though not required by §226.7.

• A State law that requires contracts to contain warnings such as: ''Read this contract before you sign. Do not sign if any spaces are left blank. You are entitled to a copy of this contract.''

Similarly, a State law that requires itemization of the amount financed does not automatically contradict the permissive itemization under §226.18(c). However, a State law requirement that the itemization appear with the disclosure of the amount financed in the segregated closed-end credit disclosures is inconsistent, and this location requirement would be preempted.

4. *Creditor's options.* Before the Board makes a determination about a specific State law, the creditor has certain options. Since the prohibition against giving the State disclosures does not apply until the Board makes its determination, the creditor may choose to give State disclosures until the Board formally determines that the State law is inconsistent. (The Board will provide sufficient time for creditors to revise forms and procedures as necessary to conform to its determinations.)

• Under this first approach, as in all cases, the Federal disclosures must be clear and conspicuous, and the closed-end disclosures must be properly segregated in accordance with §226.17(a)(1).

• This ability to give State disclosures relieves any uncertainty that the creditor might have prior to Board determinations of inconsistency.

As a second option, the creditor may apply the preemption standards to a State law, conclude that it is inconsistent, and choose not to give the state-required disclosures. However, nothing in §226.28(a) provides the creditor with immunity for violations of State law if the creditor chooses *not* to make State disclosures and the Board later determines that the State law is not preempted.

5. *Rules for correction of billing errors and regulation of credit reports.* The preemption criteria for the fair credit billing provisions set forth in §226.28 have 2 parts. With respect to the rules on correction of billing errors and regulation of credit reports (which are in §226.13), §226.28(a)(2)(i) provides that a State law is inconsistent and preempted if its requirements are different from the Federal law. An exception is made, however, for State laws that allow the consumer to inquire about an account and require the creditor to respond to such inquiries beyond the time limits in the Federal law. Such a State law is not preempted with respect to the extra time period. For example, §226.13 requires the consumer to submit a written notice of billing error within 60 days after transmittal of the periodic statement showing the alleged error. If a State law allows the consumer 90 days to submit a notice, the State law remains in effect to provide the extra 30 days. Any State law disclosures concerning this extended state time limit must reflect the qualifications and conform to the format specified in §226.28(a)(2)(i). Examples of laws that would be preempted include:

• A State law that has a narrower or broader definition of *billing error.*

• A State law that requires the creditor to take different steps to resolve errors.

• A State law that provides different timing rules for error resolution (subject to the exception discussed above).

6. *Rules for other fair credit billing provisions.* The second part of the criteria for fair credit billing relates to the other rules implementing chapter 4 of the Act (addressed in §§226.4(c)(8), 226.5(b)(2)(ii), 226.6(d), 226.7(k), 226.9(a), 226.10, 226.11, 226.12 (c) through (f),

226.13, and 226.21). Section 226.28(a)(2)(ii) provides that the test of inconsistency is whether the creditor can comply with State law without violating Federal law. For example:

• A State law that allows the card issuer to offset the consumer's credit-card indebtedness against funds held by the card issuer would be preempted, since §226.12(d) prohibits such action.

• A State law that requires periodic statements to be sent *more* than 14 days before the end of a free-ride period would not be preempted.

• A State law that permits consumers to assert claims and defenses against the card issuer without regard to the $50 and 100-mile limitations of §226.12(c)(3)(ii) would not be preempted.

In the last 2 cases, compliance with State law would involve no violation of the Federal law.

7. *Who may receive a chapter 4 determination.* Only states (through their authorized officials) may request and receive determinations on inconsistency with respect to the fair credit billing provisions.

8. *Preemption determination—Arizona.* Effective October 1, 1983, the Board has determined that the following provisions in the State law of Arizona are preempted by the Federal law:

- Section 44–287 B.5—Disclosure of final cash price balance. This provision is preempted in those transactions in which the amount of the final cash price balance is the same as the Federal amount financed, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.
- Section 44–287 B.6—Disclosure of finance charge. This provision is preempted in those transactions in which the amount of the finance charge is different from the amount of the Federal finance charge, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount.
- Section 44–287 B.7—Disclosure of the time balance. The time balance disclosure provision is preempted in those transactions in which the amount is the same as the amount of the Federal total of payments, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.

9. *Preemption determination—Florida.* Effective October 1, 1983, the Board has determined that the following provisions in the State law of Florida are preempted by the Federal law:

- Sections 520.07(2)(f) and 520.34(2)(f)—Disclosure of amount financed. This disclosure is preempted in those transactions in which the amount is different from the Federal amount financed, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount.
- Sections 520.07(2)(g), 520.34(2)(g), and 520.35(2)(d)—Disclosure of finance charge and a description of its components. The finance charge disclosure is preempted in those transactions in which the amount of the finance charge is different from the Federal amount, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount. The requirement to describe or itemize the components of the finance charge, which is also included in these provisions, is not preempted.
- Sections 520.07(2)(h) and 520.34(2)(h)—Disclosure of total of payments. The total of payments disclosure is preempted in those transactions in which the amount differs from the amount of the Federal total of payments, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount than the Federal law.
- Sections 520.07(2)(i) and 520.34(2)(i)—Disclosure of deferred payment price. This disclosure is preempted in those transactions in which the amount is the same as the Federal total sale price, since in such transactions the State law requires the use of a different term than the Federal law to represent the same amount as the Federal law.

10. *Preemption determination—Missouri.* Effective October 1, 1983, the Board has determined that the following provisions in the State law of Missouri are preempted by the Federal law:

- Sections 365.070–6(9) and 408.260–5(6)—Disclosure of principal balance. This disclosure is preempted in those transactions in which the amount of the principal balance is the same as the Federal amount financed, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.
- Sections 365.070–6(10) and 408.260–5(7)—Disclosure of time price differential and time charge, respectively. These disclosures are preempted in those transactions in which the amount is the same as the Federal finance charge, since in such transactions the State law requires the use of a term different from the Federal law to represent the same amount.
- Sections 365.070–2 and 408.260–2—Use of the terms *time price differential* and *time charge* in certain notices to the buyer. In those transactions in which the State disclosure of the time price differential or time charge is preempted, the use of the terms in this notice also is preempted. The notice itself is not preempted.

- Sections 365.070–6(11) and 408.260–5(8)—Disclosure of time balance. The time balance disclosure is preempted in those transactions in which the amount is the same as the amount of the Federal total of payments, since in such transactions the State law requires the use of a different term than the Federal law to represent the same amount.
- Sections 365.070–6(12) and 408.260–5(9)—Disclosure of time sale price. This disclosure is preempted in those transactions in which the amount is the same as the Federal total sale price, since in such transactions the State law requires the use of a different term from the Federal law to represent the same amount.

11. *Preemption determination—Mississippi.* Effective October 1, 1984, the Board has determined that the following provision in the State law of Mississippi is preempted by the Federal law:

- Section 63–19–31(2)(g)—Disclosure of finance charge. This disclosure is preempted in those cases in which the term *finance charge* would be used under State law to describe a different amount than the finance charge disclosed under Federal law.

12. *Preemption determination—South Carolina.* Effective October 1, 1984, the Board has determined that the following provision in the State law of South Carolina is preempted by the Federal law.

- Section 37–10–102(c)—Disclosure of due-on-sale clause. This provision is preempted, but only to the extent that the creditor is required to include the disclosure with the segregated Federal disclosures. If the creditor may comply with the State law by placing the due-on-sale notice apart from the Federal disclosures, the state law is not preempted.

13. *Preemption determination—Arizona.* Effective October 1, 1986, the Board has determined that the following provision in the State law of Arizona is preempted by the Federal law:

- Section 6–621A.2—Use of the term *the total sum of* $_______ in certain notices provided to borrowers. This term describes the same item that is disclosed under Federal law as the *total of payments.* Since the State law requires the use of a different term than Federal law to describe the same item, the State-required term is preempted. The notice itself is not preempted.

NOTE: The State disclosure notice that incorporated the above preempted term was amended on May 4, 1987, to provide that disclosures must now be made pursuant to the Federal disclosure provisions.)

14. *Preemption determination—Indiana.* Effective October 1, 1988, the Board has determined that the following provision in the State law of Indiana is preempted by the Federal law:

- Section 23–2–5–8—Inclusion of the loan broker's fees and charges in the calculation of, among other items, the finance charge and annual percentage rate disclosed to potential borrowers. This disclosure is inconsistent with sections 106(a) and §226.4(a) of the Federal statute and regulation, respectively, and is preempted in those instances where the use of the same term would disclose a different amount than that required to be disclosed under Federal law.

15. *Preemption determination—Wisconsin.* Effective October 1, 1991, the Board has determined that the following provisions in the state law of Wisconsin are preempted by the federal law:

- Section 422.308(1)—the disclosure of the annual percentage rate in cases where the amount of the annual percentage rate disclosed to consumers under the state law differs from the amount that would be disclosed under federal law, since in those cases the state law requires the use of the same term as the federal law to represent a different amount than the federal law.
- Section 766.565(5)—the provision permitting a creditor to include in an open-end home equity agreement authorization to declare the account balance due and payable upon receiving notice of termination from a non-obligor spouse, since such provision is inconsistent with the purpose of the federal law.

*28(b) Equivalent disclosure requirements.*

1. *General.* A state disclosure may be substituted for a Federal disclosure only *after* the Board has made a finding of substantial similarity. Thus, the creditor may not unilaterally choose to make a state disclosure in place of a Federal disclosure, even if it believes that the state disclosure is substantially similar. Since the rule stated in §226.28(b) does not extend to any requirement relating to the finance charge or annual percentage rate, no state provision on computation, description, or disclosure of these terms may be substituted for the Federal provision.

*28(d) Special Rule for Credit and Charge Cards*

1. *General.* The standard that applies to preemption of state laws as they affect transactions of the type subject to §§226.5a and 226.9(e) differs from the preemption standards generally applicable under the Truth in Lending Act. The Fair Credit and Charge Card Disclosure Act fully preempts state laws relating to the disclosure of credit information in consumer credit or charge card applications or solicitations. (For purposes of this section, a single credit or charge card application or solicitation that may be used to open either an account for consumer purposes or an account for business purposes is deemed to be a ''consumer credit or charge card application or solicitation.'') For example, a state law requiring

disclosure of credit terms in direct mail solicitations for consumer credit card accounts is preempted. A state law requiring disclosures in telephone applications for consumer credit card accounts also is preempted, even if it applies to applications initiated by the consumer rather than the issuer, because the state law relates to the disclosure of credit information in applications or solicitations within the general field of preemption, that is, consumer credit and charge cards.

2. *Limitations on field of preemption.* Preemption under the Fair Credit and Charge Card Disclosure Act does not extend to state laws applying to types of credit other than open-end consumer credit and charge card accounts. Thus, for example, a state law is not preempted as it applies to disclosures in credit and charge card applications and solicitations solely for business-purpose accounts. On the other hand, state credit disclosure laws will not apply to a single application or solicitation to open either an account for consumer purposes or an account for business purposes. Such ''dual purpose'' applications and solicitations are treated as ''consumer credit or charge card applications or solicitations'' under this section and state credit disclosure laws applicable to them are preempted. Preemption under this statute does not extend to state laws applicable to home equity plans; preemption determinations in this area are based on the Home Equity Loan Consumer Protection Act, as implemented in §226.5b of the regulation.

3. *Laws not preempted.* State laws relating to disclosures concerning credit and charge cards other than in applications, solicitations, or renewal notices are not preempted under §226.28(d). In addition, state laws regulating the terms of credit and charge card accounts are not preempted, nor are laws preempted that regulate the form or content of information unrelated to the information required to be disclosed under §§226.5a and 226.9(e). Finally, state laws concerning the enforcement of the requirements of §§226.5a and 226.9(e) and state laws prohibiting unfair or deceptive acts or practices concerning credit and charge card applications, solicitations and renewals are not preempted. Examples of laws that are not preempted include:

• A state law that requires card issuers to offer a grace period or that prohibits certain fees in credit and charge card transactions.

• A state retail installment sales law or a state plain language law, except to the extent that it regulates the disclosure of credit information in applications, solicitations and renewals of accounts of the type subject to §§226.5a and 226.9(e).

• A state law requiring notice of a consumer's rights under antidiscrimination or similar laws or a state law requiring notice about credit information available from state authorities.

References

*Statute:* Sections 111 and 171 (a) and (c).

*Other sections:* Appendix A.

*Previous regulation:* Section 226.6 (b) and (c), and Interpretation §226.604.

*1981 changes:* Section 226.28 implements amended section 111 of the Act. The test for preemption of state laws relating to disclosure and advertising is now whether the state law ''contradicts'' the Federal, rather than whether state requirements are ''different.''

The revised regulation contains no counterpart to §226.6(c) of the previous regulation concerning placement of inconsistent disclosures. It also reflects the statutory amendment providing that once the Board determines that a state-required disclosure is inconsistent with Federal law, the creditor may not make the state disclosure.

### *Section 226.29—State Exemptions*

*29(a) General rule.*

1. *Classes eligible.* The state determines the classes of transactions for which it will request an exemption, and makes its application for those classes. Classes might be, for example, all open-end credit transactions, all open-end and closed-end transactions, or all transactions in which the creditor is a bank.

2. *Substantial similarity.* The ''substantially similar'' standard requires that state statutory or regulatory provisions and state interpretations of those provisions be generally the same as the Federal Act and Regulation Z. This includes the requirement that state provisions for reimbursement to consumers for overcharges be at least equivalent to those required in section 108 of the act. A State will be eligible for an exemption even if its law covers classes of transactions not covered by the Federal law. For example, if a state's law covers agricultural credit, this will not prevent the Board from granting an exemption for consumer credit, even though agricultural credit is not covered by the Federal law.

3. *Adequate enforcement.* The standard requiring adequate provision for enforcement generally means that appropriate state officials must be authorized to enforce the state law through procedures and sanctions comparable to those available to Federal enforcement agencies. Furthermore, state law must make adequate provision for enforcement of the reimbursement rules.

4. *Exemptions granted.* Effective October 1, 1982, the Board has granted the following exemptions from portions of the revised Truth in Lending Act:

• *Maine.* Credit or lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from chapters 2, 4 and 5 of the Federal Act.

(The exemption does not apply to transactions in which a federally chartered institution is a creditor or lessor.)

• *Connecticut.* Credit transactions subject to the Connecticut Truth in Lending Act are exempt from chapters 2 and 4 of the Federal Act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)

• *Massachusetts.* Credit transactions subject to the Massachusetts Truth in Lending Act are exempt from chapters 2 and 4 of the Federal Act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)

• *Oklahoma.* Credit or lease transactions subject to the Oklahoma Consumer Credit Code are exempt from chapters 2 and 5 of the Federal Act. (The exemption does not apply to sections 132 through 135 of the Federal Act, nor does it apply to transactions in which a federally chartered institution is a creditor or lessor.)

• *Wyoming.* Credit transactions subject to the Wyoming Consumer Credit Code are exempt from chapter 2 of the Federal Act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)

*29(b) Civil liability.*

1. *Not eligible for exemption.* The provision that an exemption may not extend to sections 130 and 131 of the Act assures that consumers retain access to both Federal and State courts in seeking damages or civil penalties for violations, while creditors retain the defenses specified in those sections.

References

*Statute:* Sections 108, 123, and 171(b).

*Other sections:* Appendix B.

*Previous regulation:* Section 226.12.

*1981 changes:* The procedures that states must follow to seek exemptions are now located in an appendix. Exemptions under the previous regulation will be automatically revoked on April 1, 1982, when compliance with the new regulation is mandatory.

*Section 226.30—Limitation on Rates*

1. *Scope of coverage.* The requirement of this section applies to consumer credit obligations secured by a dwelling (as dwelling is defined in §226.2(a)(19)) in which the annual percentage rate may increase after consummation (or during the term of the plan, in the case of open-end credit) as a result of an increase in the interest rate component of the finance charge—whether those increases are tied to an index or formula or are within a creditor's discretion. The section applies to credit sales as well as loans. Examples of credit obligations subject to this section include:

• Dwelling-secured credit obligations that require variable-rate disclosures under the regulation because the interest rate may increase during the term of the obligation.

• Dwelling-secured open-end credit plans entered into before November 7, 1989 (the effective date of the home equity rules) that are not considered variable-rate obligations for purposes of disclosure under the regulation but where the creditor reserves the contractual right to increase the interest rate—periodic rate and corresponding annual percentage rate—during the term of the plan.

In contrast, credit obligations in which there is no contractual right to increase the interest rate during the term of the obligation are not subject to this section. Examples include:

• "Shared-equity" or "shared-appreciation" mortgage loans that have a fixed rate of interest and a shared-appreciation feature based on the consumer's equity in the mortgaged property. (The appreciation share is payable in a lump sum at a specified time.)

• Dwelling-secured fixed-rate closed-end balloon-payment mortgage loans and dwelling-secured fixed-rate open-end plans with a stated term that the creditor may renew at maturity. (Contrast with the renewable balloon-payment mortgage instrument described in comment 17(c)(1)–11.)

• Dwelling-secured fixed rate closed-end multiple advance transactions in which each advance is disclosed as a separate transaction.

• "Price level adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation.

The requirement of this section does not apply to credit obligations entered into prior to December 9, 1987. Consequently, new advances under open-end credit plans existing prior to December 9, 1987, are not subject to this section.

2. *Refinanced obligations.* On or after December 9, 1987, when a credit obligation is refinanced, as defined in §226.20(a), the new obligation is subject to this section if it is dwelling-secured and allows for increases in the interest rate.

3. *Assumptions.* On or after December 9, 1987, when a credit obligation is assumed, as defined in §226.20(b), the obligation becomes subject to this section if it is dwelling-secured and allows for increases in the interest rate.

4. *Modifications of obligations.* The modification of an obligation, regardless of when the obligation was entered into, is generally not covered by this section. For example, increasing the credit limit on a dwelling-secured, open-end plan with a variable interest rate entered into before the effective date of the rule does not make the obligation subject to this section. If, however, a security

interest in a dwelling is added on or after December 9, 1987, to a credit obligation that allows for interest rate increases, the obligation becomes subject to this section. Similarly, if a variable interest rate feature is added to a dwelling-secured credit obligation, the obligation becomes subject to this section.

5. *Land trusts.* In some states, a land trust is used in residential real estate transactions. (See discussion in comment 3(a)–8).) If a consumer-purpose loan that allows for interest rate increases is secured by an assignment of a beneficial interest in a land trust that holds title to a consumer's dwelling, that loan is subject to this section.

6. *Relationship to other sections.* Unless otherwise provided for in the commentary to this section, other provisions of the regulation such as definitions, exemptions, rules and interpretations also apply to this section where appropriate. To illustrate:

- An adjustable interest rate business-purpose loan is not subject to this section even if the loan is secured by a dwelling because such credit extensions are not subject to the regulation. (See generally §226.3(a).)
- Creditors subject to this section are only those that fall within the definition of a creditor in §226.2(a)(17).

7. *Consumer credit contract.* Creditors are required to specify a lifetime maximum interest rate in their credit contracts—the instrument that creates personal liability and generally contains the terms and conditions of the agreement (for example, a promissory note or home-equity line of credit agreement). In some states, the signing of a commitment letter may create a binding obligation, for example, constituting *consummation* as defined in §226.2(a)(13). The maximum interest rate must be included in the credit contract, but a creditor may include the rate ceiling in the commitment instrument as well.

8. *Manner of stating the maximum interest rate.* The maximum interest rate must be stated in the credit contract either as a specific amount or in any other manner that would allow the consumer to easily ascertain, at the time of entering into the obligation, what the rate ceiling will be over the term of the obligation. For example, the following statements would be sufficiently specific:

- The maximum interest rate will not exceed X%.
- The interest rate will never be higher than X percentage points above the initial rate of Y%.
- The interest rate will not exceed X%, or X percentage points about [a rate to be determined at some future point in time], whichever is less.
- The maximum interest rate will not exceed X%, or the state usury ceiling, whichever is less.

The following statements would not comply with this section:

- The interest rate will never be higher than X percentage points over the prevailing market rate.
- The interest rate will never be higher than X percentage points above [a rate to be determined at some future point in time].
- The interest rate will not exceed the state usury ceiling which is currently X%.

A creditor may state the maximum rate in terms of a maximum annual percentage rate that may be imposed. Under an open-end credit plan, this normally would be the corresponding annual percentage rate. (See generally §226.6(a)(2).)

9. *Multiple interest rate ceilings.* Creditors are not prohibited from setting multiple interest rate ceilings. For example, on loans with multiple variable-rate features, creditors may establish a maximum interest rate for each feature. To illustrate, in a variable-rate loan that has an option to convert to a fixed rate, a creditor may set one maximum interest rate for the initially imposed index-based variable-rate feature and another for the conversion option. Of course, a creditor may establish one maximum interest rate applicable to all features.

10. *Interest rate charged after default.* State law may allow an interest rate after default higher than the contract rate in effect at the time of default; however, the interest rate after default is subject to a maximum interest rate set forth in a credit obligation that is otherwise subject to this section. This rule applies only in situations in which a post-default agreement is still considered part of the original obligation.

11. *Increasing the maximum interest rate—general rule.* Generally, a creditor may not increase the maximum interest rate originally set on a credit obligation subject to this section unless the consumer and the creditor enter into a new obligation. Therefore, under an open-end plan, a creditor may not increase the rate ceiling imposed merely because there is an increase in the credit limit. If an open-end plan is closed and another opened, a new rate ceiling may be imposed. Furthermore, where an open-end plan has a fixed maturity and a creditor renews the plan at maturity, or enters into a closed-end credit transaction, a new maximum interest rate may be set at that time. If the open-end plan provides for a repayment phase, the maximum interest rate cannot be increased when the repayment phase begins unless the agreement provided for such an increase. For a closed-end credit transaction, a new maximum interest rate may be set only if the transaction is satisfied and replaced by a new obligation. (The exceptions in §226.20(a)(1)–(5) which limit what transactions are considered refinancings for purposes of disclosure do not apply with respect

to increasing a rate ceiling that has been imposed; if a transaction is satisfied and replaced, the rate ceiling may be increased.)

12. *Increasing the maximum interest rate—assumption of an obligation.* If an obligation subject to this section is assumed by a new obligor and the original obligor is released from liability, the maximum interest rate set on the obligation may be increased as part of the assumption agreement. (This rule applies whether or not the transaction constitutes an assumption as defined in §226.20(b).)

13. *Transition rules.* Under footnote 50, if creditors properly include the maximum rate in their credit contracts, creditors need not revise their Truth in Lending disclosure statement forms to add the disclosures about limitations on rate increases as part of the variable-rate disclosures, until October 1, 1988. On or after that date, creditors must have the maximum rate set forth in their credit contracts and, where applicable, as part of their truth in lending disclosures in the manner prescribed in the applicable sections of the regulation.

References

*Statute:* Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552

*Other sections:* Sections 226.6, 226.18, and 226.19

*Previous regulation:* None

*1987 changes:* This section implements section 1204 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552 which provides that, effective December 9, 1987, adjustable-rate mortgages must include a limitation on the interest rate that may apply during the term of the mortgage loan. An adjustable-rate mortgage loan is defined in section 1204 as ''any loan secured by a lien on a one-to-four family dwelling unit, including a condominium unit, cooperative housing unit, or mobile home, where the loan is made pursuant to an agreement under which the creditor may, from time to time, adjust the rate of interest.'' The rule in this section incorporates section 1204 into Regulation Z and limits the scope of section 1204 to dwelling-secured consumer credit subject to the Truth in Lending Act, in which a creditor has the contractual right to increase the interest rate during the term of the credit obligation.

SUBPART E—SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

*Section 226.31—General Rules*

*31(c) Timing of disclosure.*

1. *Furnishing disclosures.* Disclosures are considered furnished when received by the consumer.

*Paragraph 31(c)(1) Disclosures for certain closed-end home mortgages.*

1. *Pre-consummation waiting period.* A creditor must furnish §226.32 disclosures at least three business days prior to consummation. Under §226.32, ''business day'' has the same meaning as the rescission rule in comment 2(a)(6)-2—all calendar days except Sundays and the federal legal holidays listed in 5 USC 6103(a). However, while the disclosure rule under §§226.15 and 226.23 extends to midnight of the third business day, the rule under §226.32 does not. For example, under §226.32, if disclosures were provided on a Friday, consummation could occur any time on Tuesday, the third business day following receipt of the disclosures. If the timing of the rescission rule were to be used, consummation could not occur until after midnight on Tuesday.

*Paragraph 31(c)(1)(i) Change in terms.*

1. *Redisclosure required.* Creditors must provide new disclosures when a change in terms makes disclosures previously provided under §226.32(c) inaccurate, including disclosures based on and labeled as an estimate. A change in terms may result from a formal written agreement or otherwise.

2. *Sale of optional products at consummation.* If the consumer finances the purchase of optional products such as credit insurance and as a result the monthly payment differs from what was previously disclosed under §226.32, redisclosure is required and a new three-day waiting period applies. (See comment 32(c)(3)–1 on when optional items may be included in the regular payment disclosure.)

*Paragraph 31(c)(1)(ii) Telephone disclosures.*

1. *Telephone disclosures.* Disclosures by telephone must be furnished at least three business days prior to consummation, calculated in accord with the timing rules under §226.31(c)(1).

*Paragraph 31(c)(1)(iii) Consumer's waiver of waiting period before consummation.*

1. *Modification or waiver.* A consumer may modify or waive the right to the three-day waiting period only after receiving the disclosures required by §226.32 and only if the circumstances meet the criteria for establishing a bona fide personal financial emergency under §226.23(e). Whether these criteria are met is determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure during the three-day period is one example of a bona fide personal financial emergency. Each consumer entitled to the three-day waiting period must sign the handwritten statement for the waiver to be effective.

*Paragraph 31(c)(2) Disclosures for reverse mortgages.*

1. *Business days.* For purposes of providing reverse mortgage disclosures, ''business day'' has the same meaning as in comment 31(c)(1)-2—all calendar days except Sundays and the federal legal holidays listed in 5 USC

6103(a). This means if disclosures are provided on a Friday, consummation could occur any time on Tuesday, the third business day following receipt of the disclosures.

2. *Open-end plans.* Disclosures for open-end reverse mortgages must be provided at least three business days before the first transaction under the plan (see §226.5(b)(1)).

*31(d) Basis of disclosures and use of estimates.*

1. *Redisclosure.* Section 226.31(d) allows the use of estimates when information necessary for an accurate disclosure is unknown to the creditor, provided that the disclosure is clearly identified as an estimate. For purposes of Subpart E, the rule in §226.31(c)(1)(i) requiring new disclosures when the creditor changes terms also applies to disclosures labeled as estimates.

*31(d)(3) Per-diem interest.*

1. *Per-diem interest.* This paragraph applies to the disclosure of any numerical amount (such as the finance charge, annual percentage rate, or payment amount) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and affected disclosures are also considered accurate, even if the disclosures were not labeled as estimates. (See comment 17(c)(2)(ii)–1 generally.)

*Section 226.32—Requirements for Certain Closed-End Home Mortgages*

*32(a) Coverage.*

*Paragraph 32(a)(1)(i).*

1. *Application date.* An application is deemed received when it reaches the creditor in any of the ways applications are normally transmitted. (See §226.19(a).) For example, if a borrower applies for a 10-year loan on September 30 and the creditor counteroffers with a 7-year loan on October 10, the application is deemed received in September and the creditor must measure the annual percentage rate against the appropriate Treasury security yield as of August 15. An application transmitted through an intermediary agent or broker is received when it reaches the creditor, rather than when it reaches the agent or broker. (See comment 19(b)-3 to determine whether a transaction involves an intermediary agent or broker.)

2. *When fifteenth not a business day.* If the 15th day of the month immediately preceding the application date is not a business day, the creditor must use the yield as of the business day immediately preceding the 15th.

3. *Calculating annual percentage rates for variable-rate loans and discount loans.* Creditors must use the rules set out in the commentary to §226.17(c)(1) in calculating the annual percentage rate for variable-rate loans (assume the rate in effect at the time of disclosure remains unchanged) and for discount, premium, and stepped-rate transactions (which must reflect composite annual percentage rates).

4. *Treasury securities.* To determine the yield on comparable Treasury securities for the annual percentage rate test, creditors may use the yield on actively traded issues adjusted to constant maturities published in the Board's ''Selected Interest Rates'' (statistical release H–15). Creditors must use the yield corresponding to the constant maturity that is closest to the loan's maturity. If the loan's maturity is exactly halfway between security maturities, the annual percentage rate on the loan should be compared with the yield for Treasury securities having the lower yield. In determining the loan's maturity, creditors may rely on the rules in §226.17(c)(4) regarding irregular first payment periods. For example:

i. If the H–15 contains a yield for Treasury securities with constant maturities of 7 years and 10 years and no maturity in between, the annual percentage rate for an 8-year mortgage loan is compared with the yield of securities having a 7-year maturity, and the annual percentage rate for a 9-year mortgage loan is compared with the yield of securities having a 10-year maturity.

ii. If a mortgage loan has a term of 15 years, and the H–15 contains a yield of 5.21 percent for constant maturities of 10 years, and also contains a yield of 6.33 percent for constant maturities of 20 years, then the creditor compares the annual percentage rate for a 15-year mortgage loan with the yield for constant maturities of 10 years.

iii. If a mortgage loan has a term of 30 years, and the H–15 does not contain a yield for 30-year constant maturities, but contains a yield for 20-year constant maturities, and an average yield for securities with remaining terms to maturity of 25 years and over, then the annual percentage rate on the loan is compared with the yield for 20-year constant maturities.

*Paragraph 32(a)(1)(ii).*

1. *Total loan amount.* For purposes of the ''points and fees'' test, the total loan amount is calculated by taking the amount financed, as determined according to §226.18(b), and deducting any cost listed in §226.32(b)(1)(iii) and §226.32(b)(1)(iv) that is both included as points and fees under §226.32(b)(1) and financed by the creditor. Some examples follow, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in points. A $500 premium for optional credit life insurance is used in one example.

i. If the consumer finances a $300 fee for a creditor-conducted appraisal and pays $400 in points at closing, the amount financed under §226.18(b) is $9,900 ($10,000 plus the $300 appraisal fee that is paid to and financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under §226.32(b)(1)(iii). It is deducted from the amount financed ($9,900) to derive a total loan amount of $9,600.

ii. If the consumer pays the $300 fee for the creditor-conducted appraisal in cash at closing, the $300 is included in the points and fees calculation because it is paid to the creditor. However, because the $300 is not financed by the creditor, the fee is not part of the amount financed under §226.18(b). In this case, the amount financed is the same as the total loan amount: $9,600 ($10,000, less $400 in prepaid finance charges).

iii. If the consumer finances a $300 fee for an appraisal conducted by someone other than the creditor or an affiliate, the $300 fee is not included with other points and fees under §226.32(b)(1)(iii). The amount financed under §226.18(b) is $9,900 ($10,000 plus the $300 fee for an independently-conducted appraisal that is financed by the creditor, less the $400 paid in cash and deducted as prepaid finance charges).

iv. If the consumer finances a $300 fee for a creditor-conducted appraisal and a $500 single premium for optional credit life insurance, and pays $400 in points at closing, the amount financed under §226.18(b) is $10,400 ($10,000, plus the $300 appraisal fee that is paid to and financed by the creditor, plus the $500 insurance premium that is financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under §226.32(b)(1)(iii), and the $500 insurance premium is added under 226.32(b)(1)(iv). The $300 and $500 costs are deducted from the amount financed ($10,400) to derive a total loan amount of $9,600.

2. *Annual adjustment of $400 amount.* A mortgage loan is covered by §226.32 if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The $400 figure is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1. The Board will publish adjustments after the June figures become available each year. The adjustment for the upcoming year will be included in any proposed commentary published in the fall, and incorporated into the commentary the following spring. The adjusted figures are:

i. For 1996, $412, reflecting a 3.00 percent increase in the CPI-U from June 1994 to June 1995, rounded to the nearest whole dollar.

ii. For 1997, $424, reflecting a 2.9 percent increase in the CPI-U from June 1995 to June 1996, rounded to the nearest whole dollar.

iii. For 1998, $435, reflecting a 2.5 percent increase in the CPI-U from June 1996 to June 1997, rounded to the nearest whole dollar.

iv. For 1999, $441, reflecting a 1.4 percent increase in the CPI-U from June 1997 to June 1998, rounded to the nearest whole dollar.

v. For 2000, $451, reflecting a 2.3 percent increase in the CPI-U from June 1998 to June 1999, rounded to the nearest whole dollar.

vi. For 2001, $465, reflecting a 3.1 percent increase in the CPI-U from June 1999 to June 2000, rounded to the nearest whole dollar.

vii. For 2002, $480, reflecting a 3.27 percent increase in the CPI-U from June 2000 to June 2001, rounded to the nearest whole dollar.

viii. For 2003, $488, reflecting a 1.64 percent increase in the CPI-U from June 2001 to June 2002, rounded to the nearest whole dollar.

ix. For 2004, $499, reflecting a 2.22 percent increase in the CPI-U from June 2002 to June 2003, rounded to the nearest whole dollar.

x. For 2005, $510, reflecting a 2. 29 percent increase in the CPI–U from June 2003 to June 2004, rounded to the nearest whole dollar.

xi. For 2006, $528, reflecting a 3.51 percent increase in the CPI–U from June 2004 to June 2005, rounded to the nearest whole dollar.

xii. For 2007, $547, reflecting a 3.55 percent increase in the CPI–U from June 2005 to June 2006, rounded to the nearest whole dollar.

*32(b) Definitions*

*Paragraph 32(b)(1)(i).*

1. *General.* Section 226.32(b)(1)(i) includes in the total ''points and fees'' items defined as finance charges under §§226.4(a) and 226.(4)(b). Items excluded from the finance charge under other provisions of §226.4 are not included in the total ''points and fees'' under paragraph 32(b)(1)(i), but may be included in ''points and fees'' under paragraphs 32(b)(1)(ii) and 32(b)(1)(iii). Interest, including per-diem interest, is excluded from ''points and fees'' under §226.32(b)(1).

*Paragraph 32(b)(1)(ii).*

1. *Mortgage broker fees.* In determining ''points and fees'' for purposes of this section, compensation paid by a consumer to a mortgage broker (directly or through the creditor for delivery to the broker) is included in the calculation whether or not the amount is disclosed as a finance charge. Mortgage broker fees that are not paid by the consumer are not included. Mortgage broker fees already included in the calculation as finance charges under §226.32(b)(1)(i) need not be counted again under §226.32(b)(1)(ii).

2. *Example.* Section 226.32(b)(1)(iii) defines ''points and fees'' to include all items listed in §226.4(c)(7), other than amounts held for the future payment of taxes. An item listed in §226.4(c)(7) may be excluded from the ''points and fees'' calculation, however, if the charge is reasonable, the creditor receives no direct or indirect compensation from the charge, and the charge is not paid to an affiliate of the creditor. For example, a reasonable fee paid by the consumer to an independent, third-party appraiser may be

excluded from the "points and fees" calculation (assuming no compensation is paid to the creditor). A fee paid by the consumer for an appraisal performed by the creditor must be included in the calculation, even though the fee may be excluded from the finance charge if it is bona fide and reasonable in amount.

*Paragraph 32(b)(1)(iv).*

1. *Premium amount.* In determining "points and fees" for purposes of this section, premiums paid at or before closing for credit insurance are included whether they are paid in cash or financed, and whether the amount represents the entire premium for the coverage or an initial payment.

*32(c) Disclosures.*

1. *Format.* The disclosures must be clear and conspicuous but need not be in any particular type size or typeface, nor presented in any particular manner. The disclosures need not be a part of the note or mortgage document.

*Paragraph 32(c)(3) Regular payment; balloon payment.*

1. *General.* The regular payment is the amount due from the borrower at regular intervals, such as monthly, bimonthly, quarterly, or annually. There must be at least two payments, and the payments must be in an amount and at such intervals that they fully amortize the amount owed. In disclosing the regular payment, creditors may rely on the rules set forth in §226.18(g); however, the amounts for voluntary items, such as credit life insurance, may be included in the regular payment disclosure only if the consumer has previously agreed to the amounts.

i. If the loan has more than one payment level, the regular payment for each level must be disclosed. For example:

A. In a 30-year graduated payment mortgage where there will be payments of $300 for the first 120 months, $400 for the next 120 months, and $500 for the last 120 months, each payment amount must be disclosed, along with the length of time that the payment will be in effect.

B. If interest and principal are paid at different times, the regular amount for each must be disclosed.

C. In discounted or premium variable-rate transactions where the creditor sets the initial interest rate and later rate adjustments are determined by an index or formula, the creditor must disclose both the initial payment based on the discount or premium and the payment that will be in effect thereafter. Additional explanatory material which does not detract from the required disclosures may accompany the disclosed amounts. For example, if a monthly payment is $250 for the first six months and then increases based on an index and margin, the creditor could use language such as the following: "Your regular monthly payment will be $250 for six months. After six months your regular monthly payment will be based on an index and margin, which currently would make your payment $350. Your actual payment at that time may be higher or lower."

*Paragraph 32(c)(4) Variable-rate.*

1. *Calculating "worst-case" payment example.* Creditors may rely on instructions in §226.19(b)(2)(viii)(B) for calculating the maximum possible increases in rates in the shortest possible timeframe, based on the face amount of the note (not the hypothetical loan amount of $10,000 required by §226.19(b)(2)(viii)(B)). The creditor must provide a maximum payment for each payment level, where a payment schedule provides for more than one payment level and more than one maximum payment amount is possible.

*Paragraph 32(c)(5) Amount borrowed.*

1. *Optional insurance; debt-cancellation coverage.* This disclosure is required when the amount borrowed in a refinancing includes premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident. See comment 4(d)(3)–2 and comment app. G and H–2 regarding terminology for debt-cancellation coverage.

*32(d) Limitations.*

*32(d) Limitations*

*Paragraph 32(d)(1)(i) Balloon payment.*

1. *Regular periodic payments.* The repayment schedule for a §226.32 mortgage loan with a term of less than five years must fully amortize the outstanding principal balance through "regular periodic payments." A payment is a "regular periodic payment" if it is not more than twice the amount of other payments.

*Paragraph 32(d)(2) Negative amortization.*

1. *Negative amortization.* The prohibition against negative amortization in a mortgage covered by §226.32 does not preclude reasonable increases in the principal balance that result from events permitted by the legal obligation unrelated to the payment schedule. For example, when a consumer fails to obtain property insurance and the creditor purchases insurance, the creditor may add a reasonable premium to the consumer's principal balance, to the extent permitted by the legal obligation.

*Paragraph 32(d)(4) Increased interest rate.*

1. *Variable-rate transactions.* The limitation on interest rate increases does not apply to rate increases resulting from changes in accordance with the legal obligation in a variable-rate transaction, even if the increase occurs after default by the consumer.

*Paragraph 32(d)(5) Rebates.*

1. *Calculation of refunds.* The limitation applies only to refunds of precomputed (such as add-on) interest and not to any other charges that are considered finance charges under §226.4 (for example, points and fees paid at closing). The calculation of the refund of interest includes odd-days interest, whether paid at or after consummation.

*Paragraph 32(d)(6) Prepayment penalties.*

1. *State law.* For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable state law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the state law definition in determining if a refund is a prepayment penalty.

*32(d)(7) Prepayment penalty exception.*

*Paragraph 32(d)(7)(iii).*

1. *Calculating debt-to-income ratio.* ''Debt'' does not include amounts paid by the borrower in cash at closing or amounts from the loan proceeds that directly repay an existing debt. Creditors may consider combined debt-to-income ratios for transactions involving joint applicants.

2. *Verification.* Verification of employment satisfies the requirement for payment records for employment income.

*32(d)(8) Due-on-demand clause.*

*Paragraph 32(d)(8)(ii).*

1. *Failure to meet repayment terms.* A creditor may terminate a loan and accelerate the balance when the consumer fails to meet the repayment terms provided for in the agreement; a creditor may do so, however, only if the consumer actually fails to make payments. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under this provision if the consumer fails to meet the repayment terms of the agreement. Section 226.32(d)(8)(ii) does not override any state or other law that requires a creditor to notify a borrower of a right to cure, or otherwise places a duty on the creditor before it can terminate a loan and accelerate the balance.

*Paragraph 32(d)(8)(iii).*

1. *Impairment of security.* A creditor may terminate a loan and accelerate the balance if the consumer's action or inaction adversely affects the creditor's security for the loan, or any right of the creditor in that security. Action or inaction by third parties does not, in itself, permit the creditor to terminate and accelerate.

2. *Examples.* i. A creditor may terminate and accelerate, for example, if:

A. The consumer transfers title to the property or sells the property without the permission of the creditor.

B. The consumer fails to maintain required insurance on the dwelling.

C. The consumer fails to pay taxes on the property.

D. The consumer permits the filing of a lien senior to that held by the creditor.

E. The sole consumer obligated on the credit dies.

F. The property is taken through eminent domain.

G. A prior lienholder forecloses.

ii. By contrast, the filing of a judgment against the consumer would permit termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. If the consumer commits waste or otherwise destructively uses or fails to maintain the property such that the action adversely affects the security, the loan may be terminated and the balance accelerated. Illegal use of the property by the consumer would permit termination and acceleration if it subjects the property to seizure. If one of two consumers obligated on a loan dies, the creditor may terminate the loan and accelerate the balance if the security is adversely affected. If the consumer moves out of the dwelling that secures the loan and that action adversely affects the security, the creditor may terminate a loan and accelerate the balance.

*Paragraph 32(e)(1) Repayment ability.*

1. *Determining repayment ability.* The information provided to the creditor in connection with §226.32(d)(7) may be used to show that the creditor considered the consumer's income and obligations before extending the credit. Any expected income can be considered by the creditor, except equity income that the consumer would obtain through the foreclosure of a mortgage covered by §226.32. For example, a creditor may use information about income other than regular salary or wages such as gifts, expected retirement payments, or income from housecleaning or childcare. The creditor also may use unverified income, as long as the creditor has a reasonable basis for believing that the income exists and will support the loan.

*Paragraph 32(e)(2) Home-Improvement Contracts.*

*Paragraph 32(e)(2)(i).*

1. *Joint payees.* If a creditor pays a contractor with an instrument jointly payable to the contractor and the consumer, the instrument must name as payee each consumer who is primarily obligated on the note.

*Paragraph 32(e)(3) Notice to Assignee.*

1. *Subsequent sellers or assignors.* Any person, whether or not the original creditor, that sells or assigns a mortgage subject to this section must furnish the notice of potential liability to the purchaser or assignee.

2. *Format.* While the notice of potential liability need not be in any particular format,

the notice must be prominent. Placing it on the face of the note, such as with a stamp, is one means of satisfying the prominence requirement.

*Section 226.33—Requirements for Reverse Mortgages*

*33(a) Definition.*

1. *Nonrecourse transaction.* A nonrecourse reverse mortgage transaction limits the homeowner's liability to the proceeds of the sale of the home (or any lesser amount specified in the credit obligation). If a transaction structured as a closed-end reverse mortgage transaction allows recourse against the consumer, and the annual percentage rate or the points and fees exceed those specified under §226.32(a)(1), the transaction is subject to all the requirements of §226.32, including the limitations concerning balloon payments and negative amortization.

*Paragraph 33(a)(2).*

1. *Default.* Default is not defined by the statute or regulation, but rather by the legal obligation between the parties and state or other law.

2. *Definite term or maturity date.* To meet the definition of a reverse mortgage transaction, a creditor cannot require any principal, interest, or shared appreciation or equity to be due and payable (other than in the case of default) until after the consumer's death, transfer of the dwelling, or the consumer ceases to occupy the dwelling as a principal dwelling. Some state laws require legal obligations secured by a mortgage to specify a definite maturity date or term of repayment in the instrument. An obligation may state a definite maturity date or term of repayment and still meet the definition of a reverse-mortgage transaction if the maturity date or term of repayment used would not operate to cause maturity prior to the occurrence of any of the maturity events recognized in the regulation. For example, some reverse mortgage programs specify that the final maturity date is the borrower's 150th birthday; other programs include a shorter term but provide that the term is automatically extended for consecutive periods if none of the other maturity events has yet occurred. These programs would be permissible.

*33(c) Projected total cost of credit.*

*Paragraph 33(c)(1) Costs to consumer.*

1. *Costs and charges to consumer—relation to finance charge.* All costs and charges to the consumer that are incurred in a reverse mortgage transaction are included in the projected total cost of credit, and thus in the total annual loan cost rates, whether or not the cost or charge is a finance charge under §226.4.

2. *Annuity costs.* As part of the credit transaction, some creditors require or permit a consumer to purchase an annuity that immediately—or at some future time—supplements or replaces the creditor's payments. The amount paid by the consumer for the annuity is a cost to the consumer under this section, regardless of whether the annuity is purchased through the creditor or a third party, or whether the purchase is mandatory or voluntary. For example, this includes the costs of an annuity that a creditor offers, arranges, assists the consumer in purchasing, or that the creditor is aware the consumer is purchasing as a part of the transaction.

3. *Disposition costs excluded.* Disposition costs incurred in connection with the sale or transfer of the property subject to the reverse mortgage are not included in the costs to the consumer under this paragraph. (However, see the definition of $Val_n$ in appendix K to the regulation to determine the effect certain disposition costs may have on the total annual loan cost rates.)

*Paragraph 33(c)(2) Payments to consumer.*

1. *Payments upon a specified event.* The projected total cost of credit should not reflect contingent payments in which a credit to the outstanding loan balance or a payment to the consumer's estate is made upon the occurrence of an event (for example, a ''death benefit'' payable if the consumer's death occurs within a certain period of time). Thus, the table of total annual loan cost rates required under §226.33(b)(2) would not reflect such payments. At its option, however, a creditor may put an asterisk, footnote, or similar type of notation in the table next to the applicable total annual loan cost rate, and state in the body of the note, apart from the table, the assumption upon which the total annual loan cost is made and any different rate that would apply if the contingent benefit were paid.

*Paragraph 33(c)(3) Additional creditor compensation.*

1. *Shared appreciation or equity.* Any shared appreciation or equity that the creditor is entitled to receive pursuant to the legal obligation must be included in the total cost of a reverse mortgage loan. For example, if a creditor agrees to a reduced interest rate on the transaction in exchange for a portion of the appreciation or equity that may be realized when the dwelling is sold, that portion is included in the projected total cost of credit.

*Paragraph 33(c)(4) Limitations on consumer liability.*

1. *In general.* Creditors must include any limitation on the consumer's liability (such as a nonrecourse limit or an equity conservation agreement) in the projected total cost of credit. These limits and agreements protect a portion of the equity in the dwelling for the consumer or the consumer's estate. For example, the following are limitations on the consumer's liability that must be included in the projected total cost of credit:

i. A limit on the consumer's liability to a certain percentage of the projected value of the home.

ii. A limit on the consumer's liability to the net proceeds from the sale of the property subject to the reverse mortgage.

2. *Uniform assumption for ''net proceeds'' recourse limitations.* If the legal obligation between the parties does not specify a percentage for the ''net proceeds'' liability of the consumer, for purposes of the disclosures required by § 226.33, a creditor must assume that the costs associated with selling the property will equal 7 percent of the projected sale price (see the definition of the $Val_n$ symbol under appendix K(b)(6)).

*Section 226.34—Prohibited Acts or Practices in Connection with Credit Secured by a Consumer s Dwelling; Open-end Credit*

*34(a) Prohibited acts or practices for loans subject to § 226.32.*

*Paragraph 34(a)(1) Home-improvement contracts.*

*Paragraph 34(a)(1)(i).*

1. *Joint payees.* If a creditor pays a contractor with an instrument jointly payable to the contractor and the consumer, the instrument must name as payee each consumer who is primarily obligated on the note.

*Paragraph 34(a)(2) Notice to Assignee.*

1. *Subsequent sellers or assignors.* Any person, whether or not the original creditor, that sells or assigns a mortgage subject to § 226.32 must furnish the notice of potential liability to the purchaser or assignee.

2. *Format.* While the notice of potential liability need not be in any particular format, the notice must be prominent. Placing it on the face of the note, such as with a stamp, is one means of satisfying the prominence requirement.

3. *Assignee liability.* Pursuant to section 131(d) of the act, the act's general holder-in-due course protections do not apply to purchasers and assignees of loans covered by § 226.32. For such loans, a purchaser's or other assignee's liability for all claims and defenses that the consumer could assert against the creditor is not limited to violations of the act.

*Paragraph 34(a)(3) Refinancings within one-year period.*

1. *In the borrower's interest.* The determination of whether or not a refinancing covered by § 226.34(a)(3) is in the borrower's interest is based on the totality of the circumstances, at the time the credit is extended. A written statement by the borrower that ''this loan is in my interest'' alone does not meet this standard.

i. A refinancing would be in the borrower's interest if needed to meet the borrower's ''bona fide personal financial emergency'' (see generally § 226.23(e) and § 226.31(c)(1)(iii)).

ii. In connection with a refinancing that provides additional funds to the borrower, in determining whether a loan is in the borrower's interest consideration should be given to whether the loan fees and charges are commensurate with the amount of new funds advanced, and whether the real estate-related charges are bona fide and reasonable in amount (see generally § 226.4(c)(7)).

2. *Application of the one-year refinancing prohibition to creditors and assignees.* The prohibition in § 226.34(a)(3) applies where an extension of credit subject to § 226.32 is refinanced into another loan subject to § 226.32. The prohibition is illustrated by the following examples. Assume that Creditor A makes a loan subject to § 226.32 on January 15, 2003, secured by a first lien; this loan is assigned to Creditor B on February 15, 2003:

i. Creditor A is prohibited from refinancing the January 2003 loan (or any other loan subject to § 226.32 to the same borrower) into a loan subject to § 226.32, until January 15, 2004. Creditor B is restricted until January 15, 2004, or such date prior to January 15, 2004 that Creditor B ceases to hold or service the loan. During the prohibition period, Creditors A and B may make a subordinate lien loan that does not refinance a loan subject to § 226.32. Assume that on April 1, 2003, Creditor A makes but does not assign a second-lien loan subject to § 226.32. In that case, Creditor A would be prohibited from refinancing either the first-lien or second-lien loans (or any other loans to that borrower subject to § 226.32) into another loan subject to § 226.32 until April 1, 2004.

ii. The loan made by Creditor A on January 15, 2003 (and assigned to Creditor B) may be refinanced by Creditor C at any time. If Creditor C refinances this loan on March 1, 2003 into a new loan subject to § 226.32, Creditor A is prohibited from refinancing the loan made by Creditor C (or any other loan subject to § 226.32 to the same borrower) into another loan subject to § 226.32 until January 15, 2004. Creditor C is similarly prohibited from refinancing any loan subject to § 226.32 to that borrower into another until March 1, 2004. (The limitations of § 226.34(a)(3) no longer apply to Creditor B after Creditor C refinanced the January 2003 loan and Creditor B ceased to hold or service the loan.)

*Paragraph 34(a)(4) Repayment ability.*

1. *Income.* Any expected income can be considered by the creditor, except equity income that would be realized from collateral. For example, a creditor may use information about income other than regular salary or wages such as gifts, expected retirement payments, or income from self-employment, such as housecleaning or childcare.

2. *Pattern or practice of extending credit—repayment ability.* Whether a creditor is engaging or has engaged in a pattern or practice of violations of this section depends on the totality of the circumstances in the particular

case. While a pattern or practice is not established by isolated, random, or accidental acts, it can be established without the use of a statistical process. In addition, a creditor might act under a lending policy (whether written or unwritten) and that action alone could establish a pattern or practice of making loans in violation of this section.

3. *Discounted introductory rates.* In transactions where the creditor sets an initial interest rate to be adjusted later (whether fixed or to be determined by an index or formula), in determining repayment ability the creditor must consider the consumer's ability to make loan payments based on the non-discounted or fully-indexed rate at the time of consummation.

4. *Verifying and documenting income and obligations.* Creditors may verify and document a consumer's repayment ability in various ways. A creditor may verify and document a consumer's income and current obligations through any reliable source that provides the creditor with a reasonable basis for believing that there are sufficient funds to support the loan. Reliable sources include, but are not limited to, a credit report, tax returns, pension statements, and payment records for employment income.

*Paragraph 34(b) Prohibited acts or practices for dwelling-secured loans; open-end credit.*

1. *Amount of credit extended.* Where a loan is documented as open-end credit but the features and terms or other circumstances demonstrate that it does not meet the definition of open-end credit, the loan is subject to the rules for closed-end credit, including §226.32 if the rate or fee trigger is met. In applying the triggers under §226.32, the ''amount financed,'' including the ''principal loan amount'' must be determined. In making the determination, the amount of credit that would have been extended if the loan had been documented as a closed-end loan is a factual determination to be made in each case. Factors to be considered include the amount of money the consumer originally requested, the amount of the first advance or the highest outstanding balance, or the amount of the credit line. The full amount of the credit line is considered only to the extent that it is reasonable to expect that the consumer might use the full amount of credit.

## SUBPART F—ELECTRONIC COMMUNICATION

### *Section 226.36—Requirements for Electronic Communication 36(b) General Rule*

1. *Relationship to the E-Sign Act.* The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under this part other than a requirement that disclosures be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and conspicuous standard. For example, to satisfy the clear and conspicuous standard for disclosures, electronic disclosures must use visual text.

2. *Clear and conspicuous standard.* A creditor must provide electronic disclosures using a clear and conspicuous format. Also, in accordance with the E-Sign Act:

i. The creditor must disclose the requirements for accessing and retaining disclosures in that format;

ii. The consumer must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and

iii. The creditor must provide the disclosures in accordance with the specified requirements.

3. *Timing and effective delivery when a consumer becomes obligated on-line.*

i. When a creditor permits the consumer to consummate a closed-end transaction on-line, the consumer must be required to access the disclosures required under §226.18 before becoming obligated. A link to the disclosures satisfies the timing rule if the consumer cannot bypass the disclosures before becoming obligated. Or the disclosures in this example must automatically appear on the screen, even if multiple screens are required to view the entire disclosure. The creditor is not required to confirm that the consumer has read the disclosures.

ii. For disclosures that are not required to be segregated and thus may be interspersed into the text of another document, the creditor may satisfy the requirement to provide the disclosures if the document appears automatically or via a nonbypassable link. For example, when a creditor permits the consumer to open a credit card account and make a purchase immediately thereafter, disclosures required under §226.6 must be provided before the first transaction. The consumer must be required to access the disclosures (or the document containing the disclosures such as a credit card agreement) before becoming obligated for the plan (or before the first transaction). The creditor is not required to confirm that the consumer has read the disclosures.

4. *Timing and effective delivery for disclosures provided periodically.* Disclosures provided by e-mail are timely based on when the disclosures are sent. Disclosures posted at an Internet web site such as periodic statements, or change-in-terms and other notices, are timely when the creditor has both made the disclosures available and sent a notice alerting consumer that the disclosures have been posted. For example, under §226.9, creditors offering open-end plans must provide a change-in-terms notice to consumers at least 15 days in advance of certain changes. For a change-in-terms notice posted on the Internet, a creditor must both post

the notice and notify consumers of its availability at least 15 days in advance of the change.

5. *Retainability of disclosures.* Creditors satisfy the requirement that disclosures be in a form that the consumer may keep if electronic disclosures are delivered in a format that is capable of being retained (such as by printing or storing electronically). The format must also be consistent with the information required to be provided under section 101(c)(1)(C)(i) of the E-Sign Act (15 U.S.C. 7001(c)(1)(C)(i)) about the hardware and software requirements for accessing and retaining electronic disclosures.

6. *Disclosures provided on creditor's equipment.* A creditor that controls the equipment providing electronic disclosures to consumers (for example, a computer terminal in a creditor's lobby or an automated loan machine at a public kiosk) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and conspicuous format and in a form that the consumer may keep. For example, if disclosures are required at the time of an online transaction, the disclosures must be sent to the consumer's e-mail address or must be made available at another location such as the creditor's Internet web site, unless the creditor provides a printer that automatically prints the disclosures.

*36(d) Address or Location to Receive Electronic Communication*

*Paragraph 36(d)(1)*

1. *Electronic address.* A consumer's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the creditor.

*Paragraph 36(d)(2)*

1. *Identifying account involved.* A creditor may identify a specific account in a variety of ways and is not required to identify an account by reference to the account number. For example, where the consumer has only one credit card account, and no confusion would result, the card issuer may refer to ''your credit card account.'' If the consumer has two credit card accounts, the card issuer may, for example, differentiate accounts based on the card program or by using a truncated account number.

2. *90-day rule.* The actual disclosures provided to consumer must be available for at least 90 days, but the creditor has discretion to determine whether they should be available at the same location for the entire period.

*36(e) Redelivery*

1. *E-mail returned as undeliverable.* If an e-mail to the consumer (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if, for example, the creditor sends the disclosure to a different e-mail address or postal address that the creditor has on file for the consumer. Sending the disclosures a second time to the same electronic address is not sufficient if the creditor has a different address for the consumer on file.

*36(f) Electronic Signatures*

1. *Relationship to E-Sign Act.* The E-Sign Act provides that electronic signatures have the same validity as handwritten signatures. Section 106 of the E-Sign Act (15 U.S.C. 7006) defines an electronic signature. To comply with the E-Sign Act, an electronic signature must be executed or adopted by a consumer with the intent to sign the record. Regardless of the technology used to meet this requirement, the process must evidence the consumer's identity.

## APPENDIX A—EFFECT ON STATE LAWS

1. *Who may make requests.* Appendix A sets forth the procedures for preemption determinations. As discussed in §226.28, which contains the standards for preemption, a request for a determination of whether a state law is inconsistent with the requirements of chapters 1, 2, or 3 may be made by creditors, states, or any interested party. However, only states may request and receive determinations in connection with the fair credit billing provisions of chapter 4.

### References

*Statute:* Sections 111 and 171(a).

*Other sections:* Section 226.28.

*Previous regulation:* Sections 226.6(b) and 226.70 (Supplement V, Section II).

*1981 changes:* The procedures in appendix A were largely adapted from Supplement V, Section II of the previous regulation (§226.70), with changes made to streamline the procedures.

## APPENDIX B—STATE EXEMPTIONS

1. *General.* Appendix B sets forth the procedures for exemption applications. The exemption standards are found in §226.29 and are discussed in the commentary to that section.

### References

*Statute:* Sections 123 and 171(b).

*Other sections:* Section 226.29.

*Previous regulation:* Sections 226.12, 226.50 (Supplement II), 226.60 (Supplement IV), and 226.70 (Supplement V, Section I).

*1981 changes:* The procedures in appendix B represent a combination and streamlining of the procedures set forth in the supplements to the previous regulation.

## APPENDIX C—ISSUANCE OF STAFF INTERPRETATIONS

1. *General.* This commentary is the vehicle for providing official staff interpretations. Individual interpretations generally will not be issued separately from the commentary.

References

*Statute:* Sections 105 and 130(f).

*Other sections:* None.

*Previous regulation:* Section 226.1(d).

*1981 changes:* Appendix C reflects the Board's intention that this commentary serve as the vehicle for interpreting the regulation, rather than individual interpretive letters.

APPENDIX D—MULTIPLE-ADVANCE CONSTRUCTION LOANS

1. *General rule.* Appendix D provides a special procedure that creditors may use, at their option, to estimate and disclose the terms of multiple-advance construction loans when the amounts or timing of advances is unknown at consummation of the transaction. This appendix reflects the approach taken in §226.17(c)(6)(ii), which permits creditors to provide separate or combined disclosures for the construction period and for the permanent financing, if any; i.e., the construction phase and the permanent phase may be treated as one transaction or more than one transaction. Appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or timing of advances is unknown at consummation.

2. *Variable-rate multiple-advance loans.* The hypothetical disclosure required in variable-rate transactions by §226.18(f)(1)(iv) is not required for multiple-advance loans disclosed pursuant to appendix D, part I.

3. *Calculation of the total of payments.* When disclosures are made pursuant to appendix D, the total of payments may reflect either the sum of the payments or the sum of the amount financed and the finance charge.

4. *Annual percentage rate.* Appendix D does not require the use of Volume I of the Board's Annual Percentage Rate Tables for calculation of the annual percentage rate. Creditors utilizing appendix D in making calculations and disclosures may use other computation tools to determine the estimated annual percentage rate, based on the finance charge and payment schedule obtained by use of the appendix.

5. *Interest reserves.* In a multiple-advance construction loan, a creditor may establish an "interest reserve" to ensure that interest is paid as it accrues by designating a portion of the loan to be used for paying the interest that accrues on the loan. An interest reserve is not treated as a prepaid finance charge, whether the interest reserve is the same as or different from the estimated interest figure calculated under appendix D.

• If a creditor permits a consumer to make interest payments as they become due, the interest reserve should be disregarded in the disclosures and calculations under appendix D.

• If a creditor requires the establishment of an interest reserve and automatically deducts interest payments from the reserve amount rather than allow the consumer to make interest payments as they become due, the fact that interest will accrue on those interest payments as well as the other loan proceeds must be reflected in the calculations and disclosures. To reflect the effects of such compounding, a creditor should first calculate interest on the commitment amount (exclusive of the interest reserve) and then add the figure obtained by assuming that one-half of that interest is outstanding at the contract interest rate for the entire construction period. For example, using the example shown under paragraph A, part I of appendix D, the estimated interest would be $1,117.68 ($1093.75 plus an additional $23.93 calculated by assuming half of $1093.75 is outstanding at the contract interest rate for the entire construction period), and the estimated annual percentage rate would be 21.18%.

References

*Statute:* None.

*Other sections:* Sections 226.17 and 226.22.

*Previous regulation:* Interpretation §226.813.

*1981 Changes:* The use of appendix D is limited to multiple-advance loans for construction purposes or analogous types of transactions.

APPENDIX E—RULES FOR CARD ISSUERS THAT BILL ON A TRANSACTION-BY-TRANSACTION BASIS

*Statute:* None.

*Previous regulation:* Interpretation §226.709.

*Other sections:* Sections 226.6 through 226.13, and 226.15.

*1981 changes:* The rules in this appendix have been streamlined and clarified to indicate how certain card issuers that bill on a transaction basis may comply with the requirements of Subpart B.

APPENDIX F—ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CERTAIN OPEN-END CREDIT PLANS

1. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)–6 for guidance on an appropriate calculation method.

References

*Statute:* Section 107.

*Previous regulation:* Section 226.5(a)(3)(ii), footnote 5(a).

*Other sections:* Section 226.14.

*1981 changes:* This appendix incorporates a sixth example in which the transaction amount exceeds the amount of the balance subject to the periodic rate.

APPENDIXES G AND H—OPEN-END AND CLOSED-END MODEL FORMS AND CLAUSES

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability. (But see Appendix G comment 5 for special rules concerning certain disclosures required under §226.5a for credit and charge card applications and solicitations). The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Acceptable changes include, for example:

- Using the first person, instead of the second person, in referring to the borrower.
- Using ''borrower'' and ''creditor'' instead of pronouns.
- Rearranging the sequence of the disclosures.
- Not using bold type for headings.
- Incorporating certain state ''plain English'' requirements.
- Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0'', crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multi-purpose standard forms.)
- Substituting appropriate references, such as ''bank,'' ''we,'' or a specific name, for ''creditor'' in the initial open-end disclosures.
- Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

2. *Debt cancellation coverage.* This regulation does not authorize creditors to characterize debt cancellation fees as insurance premiums for purposes of this regulation. Creditors may provide a disclosure that refers to debt cancellation coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

APPENDIX G—OPEN-END MODEL FORMS AND CLAUSES

1. *Model G–1.* The model disclosures in G–1 (different balance computation methods) may be used in both the initial disclosures under §226.6 and the periodic disclosures under §226.7. As is clear from the models given, ''short-hand'' descriptions of the balance computation methods are not sufficient. The phrase ''a portion of'' the finance charge should be included if the total finance charge includes other amounts, such as transaction charges, that are not due to the application of a periodic rate. In addition, if unpaid finance charges are subtracted in calculating the balance, that fact must be stated so that the disclosure of the computation method is accurate. Only Model G–1(b) contains a final sentence appearing in brackets which reflects the total dollar amount of payments and credits received during the billing cycle. The other models do not contain this language because they reflect plans in which payments and credits received during the billing cycle are subtracted. If this is not the case, however, the language relating to payments and credits should be changed, and the creditor should add either the disclosure of the dollar amount as in Model G–1(b) or an indication of which credits (disclosed elsewhere on the periodic statement) will not be deducted in determining the balance. (Such an indication may also substitute for the bracketed sentence in Model G–1(b)). See the commentary to §226.7(e).

2. *Model G–2.* This model contains the notice of liability for unauthorized use of a credit card.

3. *Models G–3 and G–4.* These set out models for the long form billing error rights statement (for use with the initial disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement) and the alternative billing error rights statement (for use with each periodic statement), respectively. Creditors must provide the billing error rights statements in a form substantially similar to the models in order to comply with the regulation. The model billing rights statements may be modified in any of the ways set forth in the first paragraph to the commentary on appendices G and H. The models may, furthermore, be modified by deleting inapplicable information, such as:

- The paragraph concerning stopping a debit in relation to a disputed amount, if the creditor does not have the ability to debit automatically the consumer's saving or checking account for payment.
- The rights stated in the special rule for credit card purchases and any limitations on those rights.

The model billing rights statements also contain optional language that creditors may use. For example, the creditor may:

- Include a statement to the effect that notice of a billing error must be submitted on something other than the payment ticket or other material accompanying the periodic disclosures.
- Insert its address or refer to the address that appears elsewhere on the bill.

Additional information may be included on the statements as long as it does not detract from the required disclosures. For instance, information concerning the reporting of errors in connection with a checking account may be included on a combined statement as long as the disclosures required by the regulation remain clear and conspicuous.

4. *Models G–5 through G–9*. These models set out notices of the right to rescind that would be used at different times in an open-end plan. The last paragraph of each of the rescission model forms contains a blank for the date by which the consumer's notice of cancellation must be sent or delivered. A parenthetical is included to address the situation in which the consumer's right to rescind the transaction exists beyond 3 business days following the date of the transaction, for example, when the notice or material disclosures are delivered late or when the date of the transaction in paragraph 1 of the notice is an estimate. The language of the parenthetical is not optional. See the commentary to section 226.2(a)(25) regarding the specificity of the security interest disclosure for model form G-7.

5. Model G–10(A), Sample G–10(B) and Model G–10(C). i. Model G–10(A) and Sample G–10(B) illustrate, in the tabular format, all of the disclosures required under §226.5a for applications and solicitations for credit cards other than charge cards. Model G–10(B) is a sample disclosure illustrating an account with a lower introductory rate and penalty rate. Model G–10(C) illustrates the tabular format disclosure for charge card applications and solicitations and reflects all of the disclosures in the table.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms G–10(A) and (C). The disclosures may, however, be arranged vertically or horizontally and need not be highlighted aside from being included in the table. While proper use of the model forms will be deemed in compliance with the regulation, card issuers are permitted to use headings and disclosures other than those in the forms (with an exception relating to the use of ''grace period'') if they are clear and concise and are substantially similar to the headings and disclosures contained in model forms. For further discussion of requirements relating to form, see the commentary to §226.5a(a)(2).

6. *Models G–11 and G–12*. Model G–11 contains clauses that illustrate the general disclosures required under §226.5a(e) in applications and solicitations made available to the general public. Model G–12 is a model clause for the disclosure required under §226.5a(f) when a charge card accesses an open-end plan offered by another creditor.

7. *Models G–13(A) and G–13(B)*. These model forms illustrate the disclosures required under §226.9(f) when the card issuer changes the entity providing insurance on a credit card account. Model G–13(A) contains the items set forth in §226.9(f)(3) as examples of significant terms of coverage that may be affected by the change in insurance provider. The card issuer may either list all of these potential changes in coverage and place a check mark by the applicable changes, or list only the actual changes in coverage. Under either approach, the card issuer must either explain the changes or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. Model G–13(A) also illustrates the permissible combination of the two notices required by §226.9(f)—the notice required for a planned change in provider and the notice required once a change has occurred. This form may be modified for use in providing only the disclosures required before the change if the card issuer chooses to send two separate notices. Thus, for example, the references to the attached policy or certificate would not be required in a separate notice prior to a change in the insurance provider since the policy or certificate need not be provided at that time. Model G–13(B) illustrates the disclosures required under §226.9(f)(2) when the insurance provider is changed.

## APPENDIX H—CLOSED-END MODEL FORMS AND CLAUSES

1. *Models H–1 and H–2*. Creditors may make several types of changes to closed-end model forms H–1 (credit sale) and H–2 (loan) and still be deemed to be in compliance with the regulation, provided that the required disclosures are made clearly and conspicuously. Permissible changes include the addition of the information permitted by footnote 37 to §226.17 and ''directly related'' information as set forth in the commentary to §226.17(a).

The creditor may also delete or, on multipurpose forms, indicate inapplicable disclosures, such as:

- The itemization of the amount financed option. (See Samples H–12 through H–15.)
- The credit life and disability insurance disclosures. (See Samples H–11 and H–12.)
- The property insurance disclosures. (See Samples H–10 through H–12, and H–14.)
- The ''filing fees'' and ''non-filing insurance'' disclosures. (See Samples H–11 and H–12.)
- The prepayment penalty or rebate disclosures. (See Samples H–12 and H–14.)
- The total sale price. (See Samples H–11 through H–15.)

Other permissible changes include:

- Adding the creditor's address or telephone number. (See the commentary to §226.18(a).)
- Combining required terms where several numerical disclosures are the same, for instance, if the ''total of payments'' equals the ''total sale price.'' (See the commentary to §226.18.)
- Rearranging the sequence or location of the disclosures—for instance, by placing the

descriptive phrases outside the boxes containing the corresponding disclosures, or by grouping the descriptors together as a glossary of terms in a separate section of the segregated disclosures; by placing the payment schedule at the top of the form; or by changing the order of the disclosures in the boxes, including the annual percentage rate and finance charge boxes.

• Using brackets, instead of checkboxes, to indicate inapplicable disclosures.

• Using a line for the consumer to initial, rather than a checkbox, to indicate an election to receive an itemization of the amount financed.

• Deleting captions for disclosures.

• Using a symbol, such as an asterisk, for estimated disclosures, instead of an ''e.''

• Adding a signature line to the insurance disclosures to reflect joint policies.

• Separately itemizing the filing fees.

• Revising the late charge disclosure in accordance with the commentary to §226.18(l).

2. *Model H–3.* Creditors have considerable flexibility in filling out Model H–3 (itemization of the amount financed). Appropriate revisions, such as those set out in the commentary to §226.18(c), may be made to this form without loss of protection from civil liability for proper use of the model forms.

3. *Models H–4 through H–7.* The model clauses are not included in the model forms although they are mandatory for certain transactions. Creditors using the model clauses when applicable to a transaction are deemed to be in compliance with the regulation with regard to that disclosure.

4. *Model H–4(A).* This model contains the variable rate model clauses applicable to transactions subject to §226.18(f)(1) and is intended to give creditors considerable flexibility in structuring variable rate disclosures to fit individual plans. The information about circumstances, limitations, and effects of an increase may be given in terms of the contract interest rate or the annual percentage rate. Clauses are shown for hypothetical examples based on the specific amount of the transaction and based on a representative amount. Creditors may preprint the variable rate disclosures based on a representative amount for similar types of transactions, instead of constructing an individualized example for each transaction. In both representative examples and transaction-specific examples, creditors may refer either to the incremental change in rate, payment amount, or number of payments, or to the resulting rate, payment amount, or number of payments. For example, creditors may state that the rate will increase by 2%, with a corresponding $150 increase in the payment, or creditors may state that the rate will increase to 16%, with a corresponding payment of $850.

5. *Model H–4(B).* This model clause illustrates the variable-rate disclosure required under §226.18(f)(2), which would alert consumers to the fact that the transaction contains a variable-rate feature and that disclosures were provided earlier.

6. *Model H–4(C).* This model clause illustrates the early disclosures required generally under §226.19(b). It includes information on how the consumer's interest rate is determined and how it can change over the term of the loan, and explains changes that may occur in the borrower's monthly payment. It contains an example of how to disclose historical changes in the index or formula values used to compute interest rates for the preceding 15 years. The model clause also illustrates the disclosure of the initial and maximum interest rates and payments based on an initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure and illustrates how to provide consumers with a method for calculating the monthly payment for the loan amount to be borrowed.

7. *Model H–4(D).* This model clause illustrates the adjustment notice required under §226.20(c), and provides examples of payment change notices and annual notices of interest rate changes.

8. *Model H–5.* This contains the demand feature clause.

9. *Model H–6.* This contains the assumption clause.

10. *Model H–7.* This contains the required deposit clause.

11. *Models H–8 and H–9.* These models contain the rescission notices for a typical closed-end transaction and a refinancing, respectively. The last paragraph of each model form contains a blank for the date by which the consumer's notice of cancellation must be sent or delivered. A parenthetical is included to address the situation in which the consumer's right to rescind the transaction exists beyond 3 business days following the date of the transaction, for example, where the notice or material disclosures are delivered late or where the date of the transaction in paragraph 1 of the notice is an estimate. The language of the parenthetical is not optional. See the commentary to section 226.2(a)(25) regarding the specificity of the security interest disclosure for model form H-9. The prior version of model form H–9 is substantially similar to the current version and creditors may continue to use it, as appropriate. Creditors are encouraged, however, to use the current version when reordering or reprinting forms.

12. *Sample forms.* The sample forms (H–10 through H–15) serve a different purpose than the model forms. The samples illustrate various ways of adapting the model forms to the

individual transactions described in the commentary to appendix H. The deletions and rearrangments shown relate only to the specific transactions described. As a result, the samples do not provide the general protection from civil liability provided by the model forms and clauses.

13. *Sample H–10.* This sample illustrates an automobile credit sale. The cash price is $7,500 with a downpayment of $1,500. There is an 8% add-on interest rate and a term of 3 years, with 36 equal monthly payments. The credit life insurance premium and the filing fees are financed by the creditor. There is a $25 credit report fee paid by the consumer before consummation, which is a prepaid finance charge.

14. *Sample H–11.* This sample illustrates an installment loan. The amount of the loan is $5,000. There is a 12% simple interest rate and a term of 2 years. The date of the transaction is expected to be April 15, 1981, with the first payment due on June 1, 1981. The first payment amount is labelled as an estimate since the transaction date is uncertain. The odd days' interest ($26.67) is collected with the first payment. The remaining 23 monthly payments are equal.

15. *Sample H–12.* This sample illustrates a refinancing and consolidation loan. The amount of the loan is $5,000. There is a 15% simple interest rate and a term of 3 years. The date of the transaction is April 1, 1981, with the first payment due on May 1, 1981. The first 35 monthly payments are equal, with an odd final payment. The credit disability insurance premium is financed. In calculating the annual percentage rate, the U.S. Rule has been used. Since an itemization of the amount financed is included with the disclosures, the statement regarding the consumer's option to receive an itemization is deleted.

16. *Samples H–13 through H–15.* These samples illustrate various mortgage transactions. They assume that the mortgages are subject to the Real Estate Settlement Procedures Act (RESPA). As a result, no option regarding the itemization of the amount financed has been included in the samples, because providing the good faith estimates of settlement costs required by RESPA satisfies Truth in Lending's amount financed itemization requirement. (See footnote 39 to §226.18(c).)

17. *Sample H–13.* This sample illustrates a mortgage with a demand feature. The loan amount is $44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. The 15 days of interim interest ($294.34) is collected as a prepaid finance charge at the time of consummation of the loan (April 15, 1981). In calculating the disclosure amounts, the minor irregularities provision in §226.17(c)(4) has been used. The property insurance premiums are not included in the payment schedule. This disclosure statement could be used for notes with the 7-year call option required by the Federal National Mortgage Association (FNMA) in states where due-on-sale clauses are prohibited.

18. *Sample H–14.* This sample disclosure form illustrates the disclosures under §226.19(b) for a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year. The sample form shows a creditor how to adapt the model clauses in Appendix H–4(C) to the creditor's own particular variable-rate program. The sample disclosure form describes the features of a specific variable-rate mortgage program and alerts the consumer to the fact that information on the creditor's other closed-end variable-rate programs is available upon request. It includes information on how the interest rate is determined and how it can change over time. Section 226.19(b)(2)(viii) permits creditors the option to provide either a historical example or an initial and maximum interest rates and payments disclosure; both are illustrated in the sample disclosure. The historical example explains how the monthly payment can change based on a $10,000 loan amount, payable in 360 monthly installments, based on historical changes in the values for the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year. Index values are measured for 15 years, as of the first week ending in July. This reflects the requirement that the index history be based on values for the same date or period each year in the example. The sample disclosure also illustrates the alternative disclosure under §226.19(b)(2)(viii)(B) that the initial and the maximum interest rates and payments be shown for a $10,000 loan originated at an initial interest rate of 12.41 percent (which was in effect July 1996) and to have 2 percentage point annual (and 5 percentage point overall) interest rate limitations or caps. Thus, the maximum amount that the interest rate could rise under this program is 5 percentage points higher than the 12.41 percent initial rate to 17.41 percent, and the monthly payment could rise from $106.03 to a maximum of $145.34. The loan would not reach the maximum interest rate until its fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed reflects the amortization of the loan during that period. The sample form also illustrates how to provide consumers with a method for calculating their actual monthly payment for a loan amount other than $10,000.

19. *Sample H–15.* This sample illustrates a graduated payment mortgage with a 5-year graduation period and a 7½ percent yearly increase in payments. The loan amount is $44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. Two points ($898), as well as an initial mortgage

guarantee insurance premium of $225.00, are included in the prepaid finance charge. The mortgage guarantee insurance premiums are calculated on the basis of ¼ of 1% of the outstanding principal balance under an annual reduction plan. The abbreviated disclosure permitted under §226.18(g)(2) is used for the payment schedule for years 6 through 30. The prepayment disclosure refers to both penalties and rebates because information about penalties is required for the simple interest portion of the obligation and information about rebates is required for the mortgage insurance portion of the obligation.

20. *Sample H–16*. This sample illustrates the disclosures required under §226.32(c). The sample illustrates the amount borrowed and the disclosures about optional insurance that are required for mortgage refinancings under §226.32(c)(5). Creditors may, at their option, include these disclosures for all loans subject to §226.32. The sample also includes disclosures required under §226.32(c)(3) when the legal obligation includes a balloon payment.

21. *HRSA–500–1 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all Health Education Assistance Loans (HEAL) with a variable interest rate that are interim student credit extensions as defined in Regulation Z.

22. *HRSA–500–2 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate that are interim student credit extensions as defined in Regulation Z.

23. *HRSA–502–1 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a variable interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

24. *HRSA–502–2 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

References

*Statute:* Sections 105 and 130.

*Other sections:* Sections 226.6, 226.7, 226.9, 226.12, 226.15, 226.18, and 226.23.

*Previous regulation:* None.

*1981 changes:* The model forms and clauses have no counterpart in the previous regulation.

## Appendix I—Federal Enforcement Agencies

*Statute:* Section 108.

*Other sections:* None.

*Previous regulation:* Section 226.1(b).

*1981 changes:* None.

## Appendix J—Annual Percentage Rate Computations for Closed-End Credit Transactions

1. *Use of appendix J*. Appendix J sets forth the actuarial equations and instructions for calculating the annual percentage rate in closed-end credit transactions. While the formulas contained in this appendix may be directly applied to calculate the annual percentage rate for an individual transaction, they may also be utilized to program calculators and computers to perform the calculations.

2. *Relation to Board tables*. The Board's Annual Percentage Rate Tables also provide creditors with a calculation tool that applies the technical information in appendix J. An annual percentage rate computed in accordance with the instructions in the tables is deemed to comply with the regulation. Volume I of the tables may be used for credit transactions involving equal payment amounts and periods, as well as for transactions involving any of the following irregularities: odd first period, odd first payment and odd last payment. Volume II of the tables may be used for transactions that involve any type of irregularities. These tables may be obtained from any Federal Reserve Bank or from the Board in Washington, DC 20551, upon request.

References

*Statute:* Section 107.

*Other sections:* Section 226.22.

*Previous regulation:* Section 226.40 (Supplement I).

*1981 changes:* Paragraph (b)(2) has been revised to clarify that the term of the transaction never begins earlier than consummation of the transaction. Paragraph (b)(5)(vi) has been revised to permit creditors in single-advance, single-payment transactions in which the term is less than a year and is equal to a whole number of months, to use either the 12-month method or the 365-day method to compute the number of unit-periods per year.

## Appendix K—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transactions

1. *General*. The calculation of total annual loan cost rates under appendix K is based on the principles set forth and the estimation or

''iteration'' procedure used to compute annual percentage rates under appendix J. Rather than restate this iteration process in full, the regulation cross-references the procedures found in appendix J. In other aspects the appendix reflects the special nature of reverse mortgage transactions. Special definitions and instructions are included where appropriate.

*(b) Instructions and equations for the total annual loan cost rate.*

*(b)(5) Number of unit-periods between two given dates.*

1. *Assumption as to when transaction begins.* The computation of the total annual loan cost rate is based on the assumption that the reverse mortgage transaction begins on the first day of the month in which consummation is estimated to occur. Therefore, fractional unit-periods (used under appendix J for calculating annual percentage rates) are not used.

*(b)(9) Assumption for discretionary cash advances.*

1. *Amount of credit.* Creditors should compute the total annual loan cost rates for transactions involving discretionary cash advances by assuming that 50 percent of the initial amount of the credit available under the transaction is advanced at closing or, in an open-end transaction, when the consumer becomes obligated under the plan. (For the purposes of this assumption, the initial amount of the credit is the principal loan amount less any costs to the consumer under section 226.33(c)(1).)

*(b)(10) Assumption for variable-rate reverse mortgage transactions.*

1. *Initial discount or premium rate.* Where a variable-rate reverse mortgage transaction includes an initial discount or premium rate, the creditor should apply the same rules for calculating the total annual loan cost rate as are applied when calculating the annual percentage rate for a loan with an initial discount or premium rate (see the commentary to § 226.17(c)).

*(d) Reverse mortgage model form and sample form.*

*(d)(2) Sample form.*

1. *General.* The ''clear and conspicuous'' standard for reverse mortgage disclosures does not require disclosures to be printed in any particular type size. Disclosures may be made on more than one page, and use both the front and the reverse sides, as long as the pages constitute an integrated document and the table disclosing the total annual loan cost rates is on a single page.

APPENDIX L—ASSUMED LOAN PERIODS FOR COMPUTATIONS OF TOTAL ANNUAL LOAN COST RATES

1. *General.* The life expectancy figures used in appendix L are those found in the U.S. Decennial Life Tables for women, as rounded to the nearest whole year and as published by the U. S. Department of Health and Human Services. The figures contained in appendix L must be used by creditors for all consumers (men and women). Appendix L will be revised periodically by the Board to incorporate revisions to the figures made in the Decennial Tables.

[46 FR 50288, Oct. 9, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting supplement I of part 226, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

# PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES (REGULATION AA)

### Subpart A—Consumer Complaints



### Subpart B—Credit Practices Rule



## Subpart A—Consumer Complaints

AUTHORITY: Sec. 18(f), Federal Trade Commission Act, as amended by Pub. L. 93–637.

**§ 227.1 Definitions.**

For the purposes of this part,[1] unless the context indicates otherwise, the following definitions apply:

(a) *Board* means the Board of Governors of the Federal Reserve System.

(b) *Consumer complaint* means an allegation by or on behalf of an individual, group of individuals, or other entity that a particular act or practice of a State member bank is unfair or deceptive, or in violation of a regulation issued by the Board pursuant to a Federal statute, or in violation of any other Act or regulation under which the bank must operate.

[1] The words *this part*, as used herein, mean title 12, chapter II, part 227 of the Code of Federal Regulations, cited as 12 CFR part 227 and designated as Regulation AA.