PROPOSED RULES

FEDERAL RESERVE SYSTEM

12 CFR Part 226

Reg. Z; TIL-1
FR Doc. 81-15640
Filed 5-21-81

Truth in Lending; Proposed Official Staff Commentary

Wednesday, May 27, 1981

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: In accordance with Appendix C to 12 CFR Part 226, the Board's staff is publishing for comment a proposed official staff commentary to Regulation Z, as revised effective April 1, 1981 (46 FR 20848, April 7, 1981). The commentary applies and interprets the requirements of Truth in Lending to open-end and closed-end consumer credit, and is intended to substitute for individual Board and staff interpretations of the regulation. In order to make the final commentary available at the earliest possible time, commenters must submit their comments by July 10, 1981.

DATE: Comments must be received on or before July 10, 1981.

ADDRESS: Comments should include a reference to TIL-1 and should be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue, N.W., Washington, D.C., between 8:45 a.m. and 5:15 p.m. To aid in their consideration, comments regarding each section should begin on a separate page. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT:

Contact the following attorneys in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3667 or (202) 452-3867:

Subpart A: Gerald Hurst, Beth Morgan, or Denise Rechter

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SUPPLEMENTARY INFORMATION: Effective April 1, 1981, the Board substantially revised Regulation Z, which implements the Truth in Lending Act (46 FR 20848, April 7, 1981). The revisions reflect amendments made by the Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221). Creditors may begin complying with the revised regulation immediately. Compliance does not become mandatory, however, until April 1, 1982. Before that date, creditors may continue to comply with the regulation as it existed prior to those amendments. Board and staff interpretations issued under the prior regulation will remain effective until that date.

The Board's Division of Consumer and Community Affairs is publishing a draft commentary on the revised regulation. The final commentary will be issued as an official staff interpretation, providing creditors with protection under § 130(f) of the Truth in Lending Act. Under that section, creditors acting in conformity with an official staff interpretation have no liability for violations arising from those actions.

The commentary will significantly alter the staff's approach to providing interpretations of the regulation. Under the prior regulation, staff opinions were issued in response to individual inquiries regarding specific fact situations, and were normally limited to those facts. Subsequent variations in those facts were similarly addressed in individual responses tailored to the variations. More than 1500 letters interpreting and applying the prior regulation were issued on this basis.

The commentary is expected to replace Board and staff interpretations as the sole vehicle for interpreting the regulation. The commentary will, however, be more general than the interpretations issued under the prior regulation. Unlike the earlier interpretations, the commentary will not attempt to address and resolve every question regarding the application of the regulation to specific sets of facts. Although originally designed to aid creditors in complying, the longstanding practice of trying to respond in writing to each and every special circumstance has instead created an enormous amount of regulatory material. The cumulative effect of the interpretations has been to complicate, rather than facilitate, compliance by layering one set of distinctions on top of another. Rather than resolving questions, this material in the aggregate has served to generate further questions.

In the past, creditor exposure to civil liability for technical violations of the regulation has also contributed to the demand for staff interpretations that sought to provide certainty in applying the regulation. The reduction in civil liability resulting from the 1980 statutory amendments should reduce the perceived need for written responses to a variety of specific questions.

The commentary focuses on providing general guidance to assist creditors in applying the regulation to specific situations. That guidance may take several forms. The commentary may list examples that comply with a particular regulatory standard, discuss the impact of a regulatory provision on a prevalent type of plan or transaction, or draw together and elaborate on a related group of regulatory requirements.

The commentary does not purport to the exhaustive. It concentrates on material of general application whose inclusion will, in the staff's view, be useful to the widest possible audience. For example, the commentary provides several illustrations of ways in which closed-end credit disclosures may be segregated in accordance with the requirements of § 226.17(a). The examples chosen are those that appear most likely to be utilized by a number of creditors, although other methods may be equally permissible. Similarly, the commentary

will address prevalent credit transactions, to the extent that they present important questions under the regulation. It will not, however, attempt to address each credit plan's unique set of facts. The commentary instead identifies several basic factors characterizing that type of transaction. Creditors must then determine whether the discussion applies to their own transactions given their particular variations. The staff expects to update the commentary on an annual basis, or more often as the need arises.
Each paragraph in the commentary is identifed by section and in some cases by subsection. For example the comments for § 226.21 (Treatment of credit balances) are designated as comments 21-1 through 21-5, while the comments for § 226.18 (Content of disclosures) are further broken down and designated according to the particluar subsection addressed, such as comment 18(b)-1 and 18(r)-1.
The following cross-references to related material appear at the end of each section of the commentary: (1) "Statute"--those sections of the Truth in Lending Act on which the regulatory provision is based; (2) "Other sections"--definitions and other provisions in the regulation relating to that subsection; (3) "Previous regulation"--parallel provisions in Regulation Z as it existed before April 1, 1981; and (4) "1981 changes." This last category is a brief description of the major changes made by the 1981 revisions to Regulation Z. The text of the commentary does not refer to the earlier regulation. However, a comparison to the prior regulation may in some cases be helpful in explaining the amended provision and may be of interest to some users, and the proposed commentary incorporates this information, to a limited extent, in the cross-references. The staff particularly solicits comment on whether this material should be retained.
Comment is welcome both on the substance of the material and on the format in which it is presented. Commenters are encouraged to focus on material of particular interest to them; they need not address every provision. The staff will consider for inclusion in the commentary any material appropriate for a staff interpretation of this scope, but commenters should not expect the commentary to answer every question or remove every possible ambiguity from the regulation. No comments that have the effect of revising or eliminating any requirements of the regulation itself will be considered. To expedite analysis of the comments, commenters are requested to identify portions of the commentary according to section and paragraph numbers and to begin discussion of each section on a separate page.
Comments must be received by Friday, July 10, 1981. After consideration of these comments and possible revision of the commentary, official staff interpretation TIL-1 will be published in final form in the Federal Register.

Official Staff Commentary--TIL-1

Subpart A--General

Section 226.1--Authority, purpose, coverage, organization, penalties and liabilities.
1. Foreign applicability. The regulation applies to all persons (including branches of foreign banks located in the United States) that extend consumer credit to residents (including resident aliens) of any "state" as defined in §

226.2. The regulation does not apply to a foreign branch of a U.S. bank extending credit to a U.S. citizen residing or visiting abroad or to a foreign national abroad. If an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to Regulation Z. This will be the case whether or not a particular advance on the account takes place in the United States and whether or not the extender of credit is chartered 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 in covered by this regulation.

References

Statute: §§ 102, 105.
Previous regulation: § 226.1.
1981 changes: A paragraph on coverage has been added so that the reader will understand from the start what is subject to the regulation. A paragraph on organization explains 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 213.)
Section 226.2--Definitions and rules of construction.
2(a) Definitions.
2(a)(2) Advertisement.
1. Coverage. Only commercial messages 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 the regulation. Examples include:
Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.
Announcements on radio, television, or public address system.
Direct mail literature or other printed material on any exterior or interior sign.
Point-of-sale displays.
Telephone solicitations.
Price tags that contain credit information.
Letters sent to customers as part of an organized solicitation of business.
Messages on checking account statements offering auto loans at a stated annual percentage rate.
The term does not include:
Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, and oral or written communication relating to the negotiation of a specific transaction.
Informational material distributed only to business entities.
Notices required by state law, if state law mandates that a specific notice be displayed and only the information so mandated is included in the notice.
News articles the use of which is controlled by the news media.
Market research materials that do not solicit business.
2. Persons covered. All "persons" must comply with the advertising provisions in §§ 226.16 and 226.24, not just those that satisfy the "creditor" test of paragraph (a)(17). However, under § 145 of the act, the owner or personnel of the medium in which an advertisement appears, or through which it is disseminated, are not subject to civil liability.
2(a)(3) Arranger of credit.
1. Coverage. There can be an arranger of credit only if the credit arranged involves a finance charge or is payable by written agreement in more than four installments and the person actually

extending the credit is someone who does not meet the definition of "creditor," such as when an intermediary arranges a credit extension from a non-professional lender. For example, a consumer purchases a house and finances 60 percent through a bank and, as arranged by the real estate broker, 40 percent through the seller. The consumer signs two separate notes. In the first transaction the bank is the creditor; the real estate agent is not. In the second transaction, assuming that the seller is not a creditor, the real estate agent is an arranger of credit and thus subject to the regulation.

2. Counting transactions. The definition uses the same numerical tests-- 25 transactions per year or 5 transactions per year when secured by a dwelling--as the definition of "creditor." This test is measured by the number of credit extensions arranged in the preceding calendar year. Once the test is satisfied, all transactions in the succeeding year are covered. If the test was not satisfied in the preceding calendar year, then the current calendar year is the basis for the test. Instances in which credit is offered but not accepted do not count towards satisfaction of the numerical tests. (See the discussion under "creditor" for illustrations of how to count credit extensions.)

3. Trusts. A trust and its trustee are considered the same entity for purposes of determining whether a transaction is covered by the regulation. Therefore, a trustee is not an arranger of credit as to loans made on behalf of the trust. See the discussion under "creditor" for an explanation of when a trust is a creditor for purposes of the regulation.

2(a)(4) Billing cycle or cycle.

1. Intervals. In open-end credit plans, the billing cycle determines the intervals at which periodic disclosure statements must be sent; these intervals are also used as measuring points for other creditor duties. Typically, billing cycles are monthly, but they may be more 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 where periodic payments are made through payroll deduction or through automatic debit of the consumer's asset account.

3. Equal cycles. Although paragraph (a)(4) requires cycles to be "equal," there is a permissible variance to account for weekends, holidays, and differences in the number of days in months. Cycles are considered equal if the actual date of the statement does not vary by more than four days from a fixed "day" (for example, the third Thursday of each month) "date" (for example, the 15th of each month) that the creditor regularly uses. The requirement that cycles be equal applies even if a creditor applies a daily periodic rate to determine the finance charge, since the requirement is intended both to facilitate accurate disclosure of the annual percentage rate and to assure that statements are sent regularly.

4. Payment reminder. The sending of a regular payment reminder establishes a cycle for which the creditor must send periodic statements.

2(a)(6) Business day.

1. Business function test. There is no precise test for what constitutes "substantially all" of a creditor's business functions. Factors that indicate that the

creditor is open for business include the availability of personnel to make loan disbursements, to authorize credit transactions, or to handle credit transaction inquiries. Factors that indicate that the creditor is not fully open for business include the bank's customer service windows being open only for limited purposes, such as deposits and withdrawals, bill paying, and related services.

2. Rescission rule. A more precise rule (all calendar days except Sundays and federal legal holidays listed in 5 U.S.C. 6103(a)) applies when the right of rescission is involved.

2(a)(7) Card issuer.uer.re precise rule (all calendar days except Sundays and federal legal holidays listed in 5 U.S.C. 6103(a)) applies when the right of rescission is involved.ved.r business include the availability of personnel to make loan disbursements, to authorize credit transactions, or to handle credit transaction inquiries. Factors that indicate that the creditor is not fully open for business include the bank's customer service windows being open only for limited purposes, such as deposits and withdrawals, bill paying, and related services.ces.e charge, since the requirement is intended both to facilitate accurate disclosure of the annual percentage rate and to assure that statements are sent regularly.rly.te agent is an arranger of credit and thus subject to the regulation.ion.d by a bank in the consumer's home town in covered by this regulation.ion. staff particularly solicits comment on wheth

1. Agent. An "agent" of a card issuer is considered a card issuer; but as agency relationships are traditionally defined by contract and by state 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 an agent of a card issuer. In contrast, a financial institution may become an agent of a 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 a credit card.

2(a)(8) Cardholder.

1. General rule.aT1 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 sections 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. Some creditors offer dual-purpose cards that are for business as well as consumer purposes. When 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, when 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. The cash price is not a required disclosure, but the amount is a starting point in computing the amount financed under § 226.18(b) 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). The cash price does not include any part of the finance charge.

2. Service contracts. "Service contracts" include contracts for the repair or the servicing of goods, such as mechanical breakdown coverage, even if it is characterized as a form of insurance under state law.

3. Rebates. Creditors have complete flexibility in the way that they treat rebates for purposes of disclosure and calculation. This is true whether the rebate is given by a seller or a manufacturer. Creditors may make disclosures without taking these amounts into account, or may reflect the rebate in the disclosures. For example, when the seller and consumer agree to apply the amount of a rebate to the price of the goods, that amount may be included, at the creditor's option, in the downpayment disclosed to the consumer.

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." The disclosure rules for closed-end credit are found in Subpart C.

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.

2. Rescission rules. For purposes of rescission under §§ 226.15 and 226.23, a consumer includes any natural person whose home is subject to the risk of loss as a consequence of the security interest taken in a credit transaction. Thus, if a security interest is taken in A's ownership interest in "Fair Oaks" and Fair Oaks 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 credit transaction.

3. Land trusts. Credit extended to land trusts, as described in the commentary to § 226.3, is considered consumer credit extended to a consumer for purposes of this regulation.

2(a)(12) Consumer credit.

1. "Primarily" test. There is no precise test for what constitutes credit offered or extended for personal, family, or household purposes, nor for what constitutes "primarily." See, however, the discussion of business purposes in the commentary to § 226.3.

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 state law; Regulation Z does not make this determination. Consummation 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, state 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 contract may have arisen, 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 state 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.
Tax liens, tax assessments, and court judgments (including the reaffirmation of a debt discharged in bankruptcy, if approved by a court). However, third-party financing of such obligations (for example, obtaining a bank loan 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.
Home improvement transactions involving progress payments when the consumer pays, as the work progresses, only for work completed with no contractual obligation to continue payments.
"Borrowing" against the accrued cash value of an insurance policy or a pension account, where there is no independent obligation to repay.
The issuance of letters of credit and the execution of option contracts. However, there may be an extension of credit when the letter of credit is presented for payment or the option exercised, if there is a deferral of the payment of a debt at that time.
Investment plans in which the party extending capital to the consumer risks the loss of the capital advanced. 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.
2(a)(15) Credit card.
1. General. A credit card must be usable "from time to time." This standard contemplates repeated use of a single device and therefore the definition excludes checks, and similar instruments usable only once to obtain a single credit extension.
2. Examples. The following are examples of credit cards:
A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line.
A card that accesses both a credit and an asset account (a combined credit-debit card).
An identification card that permits a consumer to defer payment on a purchase.
An identification card indicating loan approval that is presented to a merchant

or to the lender, whether or not the consumer signs a separate promissory note for each credit extension.

2(a)(16) Credit sale.

1. Special disclosure. Whenever the seller is a creditor in a transaction, the transaction is a credit sale and the special credit sale disclosures, such as the "total sale price" under § 226.18(j), must be given. This applies even when there is more than one creditor in the transaction and the creditor making the disclosures is not the seller.

2. Arranger of credit. If the seller of the property of services involved is not a creditor as to that sale, even though the seller may have arranged for financing, the transaction is not a credit sale. Thus, when a seller assists a consumer in obtaining a direct loan from a financial institution to whom the consumer's note is made payable, the transaction is a loan transaction and only the financial institution is a creditor.

3. Refinancings. When a credit sale is refinanced within the meaning of § 226.20, the refinancing is not a credit sale, unless a new sale of goods or services is also involved.

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 credit life or property insurance is in 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) for further discussion of this point.)

2(a)(17) Creditor.

1. General. The definition sets out five criteria in paragraphs (a)(17)(i) through (v); if any one of them is met, the person is a creditor.

2. Prerequisites. Paragraph (a)(17)(i) of this definition contains a frequency standard for determining when a person is a creditor. Two conditions must be met in order for a particular credit extension to be subject to the regulation and for the credit extension to be counted towards satisfaction of the numerical tests.

First there must be either:

A written, rather than an oral, agreement to pay in more than 4 installments. (A letter sent by the creditor that merely confirms an oral agreement does not constitute a written agreement for purposes of the regulation.) Or,

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 a person who would be a creditor. Thus, a single payment obligation without a finance charge does not count toward the numerical tests, nor is such a credit extension subject to the disclosure requirements of the regulation. The examples discussed below illustrate how the tests are applied. These 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.

3. Counting transactions. 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, when a person did not meet the test in the preceding year, the number of transactions is measured by the current calendar year. For example, if a person extends

consumer credit 26 times in 1983, it is a creditor for purposes of the regulation 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.

4. 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 unsecured consumer credit more than 25 times. That person is a creditor for all succeeding credit extensions, whether they involve credit secured by a dwelling or not.

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, the 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. Trusts. In the case of credit extended by trusts, each individual trust is considered a separate entity for purposes of applying the "creditor" criteria. For example, a bank is the trustee for Trust A which makes 15 extensions of consumer credit annually, Trust B which makes 10 extensions of credit annually, and Trust C which makes 30 extensions of credit annually. Only Trust C is a creditor for purposes of the regulation. The trustee is considered the same entity as the trust extending the credit; therefore, a trustee can never be considered an "arranger of credit."

7. Arranger of credit. Paragraph (a)(17)(ii) provides that a person who is an arranger of credit is deemed to be a creditor for purposes of the regulation. (See the commentary to that definition for further guidance.)

8. Card issuers subject to Subpart B. Paragraph (a)(17)(iv) 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 contemplate repayment at the first billing and do not impose a finance charge. As 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, finance charges, Spanish language disclosures, record retention, and use of model forms, also apply to such card issuers.

9. Card issuers subject to Subparts B and C. Paragraph (a)(17)(v) includes card issuers extending closed-end credit in which there is a finance charge or an agreement to repay in more than four 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.
2. Pick up payments. Creditors may treat the deferred portions of the downpayment, often referred to as "pick-up payments," in a number of ways. For example, when the pick-up payment is treated as part of the downpayment:
It is deducted in arriving at the amount financed under § 226.18(b).
It is deducted 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).
When the pick-up payment does not meet the definition (for example, if it is payable after the second 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).
2(a)(19) Dwelling.
1. Scope. A dwelling need not be the consumer's principal residence to fit this definition and thus could include a vacation or second home. However, for purposes of rescission the dwelling must be the principal residence of the consumer. (See the commentary to §§ 226.15 and 226.23 for further guidance.)
2. Use as a residence. Mobile homes, boats, and trailers are included in the definition if they are in fact used as residences, just as are condominiums and cooperatives. 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 dwelling remains subject to the regulation despite the general exemption in § 226.3(b) of 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 (for which the pertinent rules are in Subpart C). Open-end credit is consumer credit that is extended under a plan and meets all three criteria set forth in the definition.
2. Existence of a plan. The definition assumes that there is 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 is deemed to have a single account with the institution that could 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) 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 under prescribed terms and otherwise meets the open-end credit definition, such a program would be considered a single, multi-featured plan.
2. 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 an the creditor must have a legitimate expectation of repeat business. The definition therefore reflects the view stated in the legislative history that consumers should be given essential closed-end cost disclosures, such as the finance charge and the total

of payments, if a creditor makes what is likely to be a one-time credit extension, for example, when the initial transaction is the purchase of a home improvement, an automobile, or an item sold on a door-to-door basis. The creditor must expect repeated dealings with the consumer under the credit plan as a whole, and need not believe the consumer will reuse a particular feature of the plan. A stndard based on "reasonable" belief by a creditor necessarily includes some margin for judgmental error. The fact that a particular consumer does not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. This criterion is a question of fact to be decided in the context of the creditor's type of business, and the creditor's relationship with a consumer. For example:

It would be more reasonable for a thrift institution chartered for the benefit of its members to contemplete repeated transactions with a member, than for a seller of aluminum siding to make the same assumption about its customers.

It would be more reasonable for a bank 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.

3. Finance charge on 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 not at the outset a specific amount financed for which the finance charge, total of payments, and payment schedule can be calculated. A plan does not meet this criterion if purchases may be added from time to time, and the balance is payable either in full or in installments, with no possibility of a periodic finance charge. In such a case, closed-end series-of-sales disclosures under § 226.17(h) may be appropriate.

4. 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 without specific approval for each extension (beyond verification of credit information such as the consumer's continued income and employment status). This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a loan commitment. For example:

Under a closed-end commitment a creditor might agree to lend a total of $10,000 is 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 line of credit must always be replenished to its original amount. A creditor may reduce the credit limit or refuse to extend new credit in a particular case due to changes in the economy, the creditor's financial condition, or in the consumer's creditworthiness. 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 replenishing criterion.

5. 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 determine that it is open-end credit under the regulation.

2(a)(21) Periodic rate.

1. Basis. The rate may be stated as a percentage (for example), 1 1/2 % 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 a year as their period. A creditor that uses 1/360 of a year as a period:

Would have to apply the rate to the balance to disclose the annual percentage rate with the degree of accuracy required in the regulation i.e., within 1/8 of 1 percentage point based on the actual 365 days in the year).

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 it applies that rate for 365 days, the creditor would have to note that fact and, of course, disclose the true annual percentage rate.

2. Transaction charges. A 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. Scope. The definition includes joint ventures.

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 consumer requests an itemization of the amount financed.

2. Examples. Common examples of prepaid finance charges are:

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 either be paid separately in cash or check or withheld from the proceeds.

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.

2(a)(24) Residential mortgage transaction.

1. Relation to other sections. This term is important in four provisions in the regulation:

§ 226.4(c)(7)--exclusions from the finance charge.

§ 226.18(q)--whether or not the mortgage is assumable.

§ 226.19--special timing rules.

§ 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 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.
2(a)(25) Security interest.
1. Scope. To fall within this definition, an interest in property that secures performance must be recognized as a security interest under State or Federal law. The regulation does not provide such a determination. Security interests include:
UCC security interests.
Real estate mortgages.
Deeds of trust.
2. Exclusions. The definition of security interest excludes three groups of interests:
Incidental interests.
Interests in after-acquired property.
Interests that arise solely by operation of law.
Since they are not security interests, they may not be disclosed with the disclosures required in closed-end credit. A creditor is not precluded, however, from preserving these rights elsewhere in the contract documents or security agreement, or invoking and enforcing such rights, if it is otherwise lawful to do so.
3. Incidental interests. Incidental interests in property that are not security interests include:
Assignments of rents.
Condemnation proceeds.
Accessories.
Replacements.
The notion of an "incidental interest" does not encompass an explicit security interest in an insurance policy where that policy is the primary collateral for the transaction--for example, in an insurance premium financing transaction. This would be a disclosable security interest.
4. Operation of law. Interests that arise solely by operation of law are excluded from the general definition. However, if a recognized security interest both arises by operation of law and is provided by contract--such as a wage assignment or a right of setoff--there is a disclosable security interest.
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.
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.

References

Statute: § 103.
Previous regulation: §§ 226.2, 226.8, and 226.9.
1981 changes: This section reflects numerous deletions from, and some additions to, the definitions in the previous regulation. Deleted are separate definitions for period, comparative index of credit cost, real property, organization, residence, real property transaction, discount, and surcharge. The definitions relating specifically to consumer leases are now found in the separate consumer leasing regulation, Regulation M.
Several terms are now defined elsewhere in the regulation or commentary. 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. This section contains new definitions for arranger of credit, business day, closed-end credit, downpayment, residential morgage transaction, prepaid finance charge, and consumer.

The major changes in the definitions are as follows:

"Arranger of credit" has a significantly different meaning than the term "arrange for the extension of credit" under the previous regulation. The new definition reflect the statutory amendment which limits "arrangers" to those who regularly arrange credit extensions for persons who are not themselves creditors.

"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" is generally narrower than the previous definition. It excludes guarantors, sureties, and endorsers 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 when 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 pricipally 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 transactions. The new definition also requires that there be a written agreement to pay in more than four installments to trigger that part of the definition, if no finance charge is imposed. Finally, the obligation must be initially payable to a person for that person to be a creditor.

"Downpayment" incorporates the substance of a previous interpretation concerning "pick-up payments."

"Dwelling" reflect the statutory amendment that expanded the scope of the defiition to include any residential structure, whether or not it is real property under state law.

"Open-end credit" reflects the amended statutory language that the plan must be one under which the creditor reasonably contemplates repeated transactions. The new defintiion 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. "Primarily" test. No hard and fast rule is possible in applying the test of whether the credit is "primarily" for one of the purposes stated in paragraph (a)(1). Each transaction must be looked at and evaluated as a whole to determine whether it constitutes consumer credit requiring disclosures. The creditor itself is normally in the best position to make this determination. 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 act 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 invetment--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:

Whether the borrower's primary occupation is closely related to the investment. The more closely related, the more likely it is to be business purpose.

The degree to which the borrower will personally manage the investment. The more personal involvement there is, the more likely it is to be business purpose.

The ratio of investment income to the total income of the consumer. 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.

This list is intended to suggest the types of factors that a creditor should consider, since each transaction will merit an individual analysis. Some examples of what may be business-purpose credit are:

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 loan to a real estate broker to buy property for rental purposes.

Examples of what may be consumer-purpose credit are:

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.

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 single-family house that will be rented out to another person. If the owner expects to occupy the property for any portion of the coming year, it cannot be considered non-owner occupied. For example, a beach house that the owner will occupy part of the next year and rent out the rest of the year is owner occupied and therefore not subject to this special rule. Paragraph 4 below discusses other rules relating to 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 year,

different rules apply:
Credit extended to acquire such property is deemed to be for business purposes if it contains more than two housing units. Credit extended for other than acquisition--for example, to improve or maintain the property--is deemed to be for business purposes if it contains more than four housing units. This rule reflects the statutory definition of "dwelling" (one to four housing units) and 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 paragraph 2 above.
5. 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.
6. Organizational credit. The exemption in paragraph (a)(2) for transactions in which the principal 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.
7. Land trusts. Credit extended 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 a consumer 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 guarantee of the indebtedness. The note indicates 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. 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 is defined as a "dwelling" in § 226.2(a)(19), this exemption does not apply to credit extensions secured by mobile homes (whether or not considered to be real property) even if the credit exceeds $25,000. A loan commitment in excess of $25,000 is exempt even though the amounts actually drawn may never actually reach $25,000. An unsecured loan for over $25,000 is exempt, but if it is later secured by real property or a dwelling, the transaction then becomes subject to the regulation for purposes of both disclosure and the right of rescission.

3(c) Public utility credit.
1. Examples. Public utility services that may be exempt under this provision include:
Gas, water, or electrical services.
Cable television services.
Laying a new sewer line or city water line or installing conduits, telephone poles, or metering equipment in an area not already serviced by the utility.
This exemption does not apply to extensions of credit:
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 state-registered broker, or to a bank loan in which the proceeds are used to purchase securities.
3(e) Home fuel budget plans.
1. Definition. Under typical home fuel budget plans, the fuel dealer generally 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.

References

Statute: §§ 103 (s) and (t), 104.
Previous regulation: § 226.3.
1981 changes: The business credit exemption has been expanded to include credit for agricultural purposes. The rule of Board Interpretation § 226.302, concerning credit relating to structures containing more than four 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; transactions secured by any dwelling (even if not considered real property) are subject to the regulation.
The utility credit 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 an analogous cash transaction. For example, the following items are not finance charges:
Taxes, license fees, or registration fees paid by both cash and credit customers.
Discounts that are available to cash and credit customers, such as quantity discounts.
Discounts available to a particular group of consumers because they are members of an organization or have 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 don't qualify for the discount

pay no more than the non-member cash customers.
Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to both cash and credit customers for the same price.
In contrast, the following items are finance charges:
Inspection and handling fees for the staged disbursement of construction loan proceeds.
Fees for preparing a Truth in Lending disclosure statement.
Charges for a required maintenance or service contract imposed only in a credit transaction.
2. Costs of doing business. Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor takes such costs into consideration in determining the interest rates to be charged. However, if the creditor separately imposes a charge on the consumer to cover certain costs, that charge is a finance charge.
3. Charges by third parties. Charges imposed by someone other than the creditor for services that are not required by the creditor are not finance charges. An example of this:
A fee charged by a loan broker to a consumer, provided the creditor does not require the use of a broker.
4(b) Examples of finance charges.
1. Exclusions. Charges or fees shown as examples of finance charges in paragraph (b) may be excludable under paragraphs (c), (d), or (e). For example:
Premiums for credit life insurance, shown as an example of a finance charge under paragraph (b)(7), may be excluded if the requirements of paragraph (d)(1) are met.
Appraisal fees included under paragraph (b)(4) may be excluded for real property or residential mortgage transactions under paragraph (c)(7).
2. Checking account charges. The checking or transaction account charges discussed in paragraph (b)(2) include, for example, the following situations:
An account with an overdraft line of credit has a $4.50 service charge per month while an account without a credit feature has a $2.50 service charge; the $2.00 difference is a finance charge.
A service charge of $5.00 for each item that triggers an overdraft credit line is a finance charge. However, a charge imposed uniformly for any item that overdraws a checking account, regardless of whether the items are paid or returned and whether the account has a credit feature or not, is not a finance charge.
3. Assumption fees. The assumption fees mentioned in paragraph (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.
4. Credit loss insurance. Common examples of the insurance against credit loss mentioned in paragraph (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.
5. Existing insurance policy. The insurance discussed in paragraph (b)(7) and (8) does not include an insurance policy (such as a whole life or automobile collision insurance policy) that is already owned by the consumer and assigned to or otherwise made payable to the creditor to satisfy an insurance requirement, as long as the insurance was not purchased for use in

that credit extension. Such a policy is not "written in connection with" the transaction since it was previously owned by the consumer.
6. Substitution of life insurance. The premium for a life insurance policy purchased by the consumer and assigned to the creditor 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.
7. Non-credit life or property insurance. Fees for required insurance not of the types described in paragraphs (b)(7) and (b)(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.
8. Discounts for payment by other than credit. Discounts to induce payment by other than credit, as mentioned in paragraph (b)(9), include, for example, the following situation:
A seller of tracts of land offers individual tracts for $10,000 each. If a 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.
Certain discounts are excludable from the finance charge under paragraph (c)(8).
4(c) Charges excluded from the finance charge.
1. Application fees. An application fee that is excluded from the finance charge under paragraph (c)(1) is a charge to recover the costs associated with processing applications for credit. If an application fee is charged only to applicants who receive an extension of credit, the fee is a finance charge.
2. Late payment charges. Late payment charges can qualify for the exclusion from the finance charge under paragraph (c)(2) whether or not the person imposing the charge continues to extend credit on the account or to provide property or services to the consumer. In determining whether a charge is for actual unanticipated late payment, 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.
3. Participation fees. The participation fees mentioned in paragraph (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 where payment of a fee is a condition of access to the plan itself, but does not apply to fees imposed separately on individual closed-end transactions. Minimum monthly charges or other charges based on current account activity are not excluded from the finance charge by this provision.
4. Seller's points. The seller's points mentioned in paragraph (c)(5) include any charges imposed by a creditor upon the seller of property for providing credit to the buyer of the property. These charges are excluded from the finance charge whether or not they are passed on to the buyer in the form of a higher sales price. Seller's points are most often

involved in real estate transactions guaranteed or insured by governmental agencies. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.
5. 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. If the creditor reduces the interest rate paid on the account or the certificate of deposit, the consumer loses some of the interest that would have been earned. Under paragraph (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. If a bank or other financial institution reduces the interest rate on a savings account or stops paying interest for the term of a credit transaction (including an overdraft on a checking account), and that action is not required by law, the interest lost is a finance charge.
6. Real estate or mortgage charges. The list of charges contained in paragraph (c)(7) apply both to residential mortgage transactions and to other transactions secured by real estate, including for example, the purchase of a mobile home. 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 category of credit report fees includes not only the report itself, but also verification of information in the report. In all cases, the charges must be bona fide and reasonable.

Alternative I for Cash Discounts[1]

Alternative I reflects § 167(b) of the act as it was in effect on May 15, 1981. Alternative II reflects § 167(b) as it would be amended by H.R. 3132, the "Cash Discount Act."
7. Cash discounts--coverage. The discounts mentioned in paragraph (c)(8) are discounts offered to induce consumers to pay for property or services by cash, check, or other means not involving the use of a credit card (whether open-end or closed-end credit is involved). The discount may not exceed 5% of the regular price of the property or service being sold. The regular price of the property or service is (1) the tagged or posted price, if only one price is tagged or posted, or (2) the price paid by consumers using a credit card, if no price is tagged or posted or if two prices are tagged or posted. Payment by a check or other negotiable instrument that results in the debiting of a consumer's credit card account does not constitute payment by use of a credit card for purposes of determining the regular price. A transaction on a credit card plan using only the card or account number, but not the credit card itself (for example, ordering tickets by telephone), is considered a transaction involving the use of a credit card.
8. Availability of discount. The discount must be available to consumers whether or not they are cardholders, and the availability of the discount must be disclosed to the consumer before payment for the purchase is made. A merchant might disclose the availability in any of the following ways:
By posting a sign at the entrances to its store.
By posting a sign at cash registers or other points of payment.

[1] The provisions on cash discounts are presented in the alternative because of the possibility of statutory change.

Orally when the transaction involves the telephone, provided the oral disclosure is made prior to the time the consumer pays by use of a credit card number.
9. Advertising a discount. Advertisements or other solicitations for the sale of property or services that disclose a price that is not available to consumers using a credit card must also disclose that the stated price is so limited.
10. Limitation of discount to credit card transactions. A discount described by this paragraph is not a finance charge in a transaction involving a credit card, but the provision is inapplicable to any other type of credit transaction. For example, if a cash discount is unavailable to consumers using credit that does not involve the use of a credit card, the discount is a finance charge as to those transactions.
11. Relation of state laws to cash discounts. A discount that is offered in accordance with § 167(b) of the act is not a finance charge or other charge for credit under any state usury or disclosure law relating to credit transactions. (See § 171(c) of the act.)
12. Cash discount as finance charge. Any discount that fails to meet any requirement set forth in § 167(b) is a finance charge. For example, if the discount is 7% of the regular price, the entire amount is a finance charge. If the seller offering the discount is a person other than the card issuer, it need only comply with § 226.9(d), "Finance charge imposed at time of transaction." If the seller is also the card issuer, it must comply with all relevant requirements of the regulation.

Alternative II for Cash Discounts [FN2]

FN2 The provisions on cash discounts are presented in the alternative because of the possibility of statutory change. Alternative I reflects § 167(b) of the act as it was in effect on May 15, 1981. Alternative II reflects § 167(b) as it would be amended by H.R. 3132, the "Cash Discount Act."
7. Cash discounts--coverage. The discounts that may be excluded from the finance charge under paragraph (c)(8) are 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). The discount may be in whatever amount the seller desires, either as a percentage of the regular price of the item or a dollar amount.
8. Definition of regular price. For purposes of determining whether the price differential made by a seller is a discount or a surcharge (which is prohibited by § 167(a)(2) of the act), the regular price is defined in § 103(z) of the act as follows:
[T]he term "regular price" means 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 plan or a credit card is either (1) no price is tagged or posted, or (2) two prices are tagged or posted, one of which is charged when payment is made by use of an open-end credit plan or a credit card and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of an open-end credit plan or a credit cardholder's open-end account shall not be considered payment

made by use of the plan or the account.
9. Limitation of discount to certain transactions. A discount described by this paragraph is not a finance charge in a transaction involving an open-end credit plan or a credit card, but the provision does not apply to any other type of credit transaction. For example, if a cash discount is unavailable to consumers paying by use of a closed-end credit plan not involving a credit card, the discount is a finance charge as to those transactions.
10. Relation of state laws to cash discounts. A discount that is offered in accordance with § 167(b) of the act is not a finance charge or other charge for credit under any state usury or disclosure law relating to credit transaction. (See § 171(c) of the act.)
11. Cash discount as finance charge. Any discount failing to meet any requirement set forth in § 167(b) is a finance charge. If the seller is a person other than the card issuer, it need only comply with § 226.9(d), "Finance charge imposed at time of transaction." If the seller is also the card issuer, it must comply with all relevant requirements of the regulation.
4(d) Insurance.
1. Form and location of disclosures. All disclosures required by this paragraph must be made in writing. The rules on location of insurance disclosures for closed-end transactions are in § 226.17.
2. Required credit life insurance. Paragraph (d)(1) permits only voluntary credit life, accident, health, or loss-of-income insurance 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. Credit life insuance is considered to be required even if the creditor also gives the consumer the option of assigning an existing life insurace policy; if the consumer purchases the credit life insurance from the creditor, the premium must be treated as a finance charge. (See paragraph 5 to § 226.4(b), above.)
3. 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 the finance charge provisions of § 226.4.
4. Unit-cost disclosures. One of the transactions of which unit-cost disclosures (such as 50 cents per month on each $100 of the outstanding indebtedness) 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. Property insurance. To exclude property insurance premiums from the finance charge the creditor must allow the consumer to choose the insurer, and disclose that fact. The premium 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 coverate if it is less than the

term of the obligation.
6. Single interest insurance. Blanket and specific single interest coverage are treated the same for purposes of this 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 paragraph (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 requirement that an option be given does not require that the required insurance be readily available from other sources. Whether a consumer is able to purchase required property insurance from someone other than the creditor is a factual question the creditor need not answer in the affirmative in order to take advantage of these special rules.
7. Single interest insurance defined. "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," 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, holder in due course insurance, and instrument non-filing 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 paragraph (d).
4(e) Certain security interest charges.
1. Examples. The charges excludable from the finance charge under paragraph (e)(1) include:
Charges for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents.
Tax stamps.
Notary fees.
Only sums actually paid to public officials are excludable under this provision.
2. Itemization. The various charges described in paragraph (e)(1) may be totalled and disclosed as an aggregate sum, or they may be itemized according to the specific fees and taxes imposed.
3. Notary fees. In order for a notary fee to be excluded, 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. 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 under paragraph (e)(2); the exception applies only where the non-filing insurance is purchased. If the non-filing insurance premium exceeds the amount of the fees excludable from the finance charge by paragraph (e)(1), only the excess is a finance charge.
4(f) Prohibited offsets.
1. Earnings on deposits or investments. The rule that the creditor must disregard any earnings by the consumer on deposits or investments applies whether or not the creditor has a security interest in the property.

References

Statute: § 106, 167(b), 171(c).
Previous regulation: § 226.4.
1981 Changes: While generally continuing the rules under the prior regulation, this section reflects amendments to § 106 of the act and makes certain other changes in the rules for determining the finance charge. For example, subparagraph (a) includes the express limitation from the amended act that finance charges do not include charges payable in comparable cash 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."
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 dated.

Subpart B--Open-End Credit

General

This section deals with open-end credit accounts--such as revolving credit, credit card accounts, overdraft and cash advance loans--and the disclosures required for these types of credit. (The term "open-end credit" is defined in § 226.2.) This section also outlines
Sepcial rules for credit card accounts.
The procedures to be followed if errors occur in open-end credit accounts.
The rules for determining annual percentage rates for open-end accounts.
Rescission requirements as they apply to open-end credit.
The rules for open-end credit advertising.
Section 226.5--General disclosure requirements.
5(a) Form of disclosures.
1. Clear and conspicuous. Under the "clear and conspicuous" standard in paragraph (a)(1), which requires that disclosures be in a reasonably understandable and usable form, creditors
Need not segregate disclosures from other material (as is the case for closed-end disclosures under § 226.17).
May pluralize the required terminology (finance charge and annual percentage rate) where appropriate.
May add to the required disclosures such items as contractual provisions, explanations of contract terms, state law disclosures that are not inconsistent under § 226.28, translations, and promotional material, so long as the required disclosures remain clear and conspicuous.
Need not present numerical amounts or percentages in figures or in any particular type size.
2. Integrated document. Creditors 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 disclosures are made together and the pages constitute an integrated document. This would include, for example:
Multiple pages that cover related material and are stapled together or

otherwise attached.
A brochure that contains information about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features.
An integrated document would not include pages that are not attached, pages provided to the consumer at different times, or pages interspersed with unrelated notices, flyers, or promotional material.
3. When disclosures must be more conspicuous. The following rules apply to the "more conspicuous" requirement in paragraph (a)(2) about the "finance charge" and "annual percentage rate":
"Finance charge" and "annual percentage rate" must be disclosed more conspicuously when required to be used with a number. For example, on the initial disclosure statement the corresponding annual percentage rate disclosure under § 226.6(a)(2) must conform to the "more conspicuous" rule.
Neither term need be emphasized when used as part of general informational material or in textual descriptions of other terms, although 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 do not have to be more conspicuous.
The periodic statement disclosure on the corresponding annual percentage rate under § 226.7(d) need not be "more conspicuous" so that the actual APR disclosed under § 226.7(g) will be more conspicuous when they differ.
4. Making disclosures more conspicuous. The requirement in paragraph (a)(2) that "finance charge" and "annual percentage rate" be stated more conspicuously may be satisfied by:
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.
Only the words "finance charge" and "annual percentage rate" shoud be accentuated. For example, if the term "total finance charge" is used, only "finance charge" should be emphasized.
5(b) Timing of disclosures.
1. Before the first transaction. The rule in paragraph (b)(1) that the initial disclosure statement must be furnished "before the first transaction" requires delivery of initial disclosures before the consumer makes the first purchase, receives the first advance, or pays a fee under the plan. Initial disclosures are timely even if an advance or membership fee has already been posted to the consumer's account so long as the consumer may, after receiving the disclosures, reject the account and have no further obligation beyond returning money or goods provided by the creditor. An application fee under § 226.4(c)(1) does not trigger disclosures.
2. Converting closed-end credit to open-end credit. If an existing closed-end account is converted to open-end under a written agreement with the consumer, the initial disclosurer under § 226.6 must be given before the first transaction under the open-end account.
"Transaction" in this context may be a purchase or payment by the consumer or a cash advance to the consumer.
3. Converting open-end to closed-end credit. If open-end credit is converted to closed-end credit under a written agreement with the consumer (for example, if the creditor discontinues its open-end plan, or arranges for refinancing or a work-out agreement with a defaulting consumer), the creditor must provide closed-end disclosures on

the amount financed, itemization of the amount financed, and finance charge (§ 226.18(b), (c), and (d)). These disclosures must be made before consummation of the closed-end agreement.

4. Termination of open-end credit privileges. When an open-end plan is terminated without being converted to closed-end under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them (for example, while consumers are paying off outstanding balances) and must continue to follow the error resolution procedures of § 226.13.

5. Reopening terminated account. If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new initial disclosures are required.

6. Reactivitation 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 necessary.

7. Periodic statements not required. Periodic statements need not be sent in the following cases:

If the creditor unilaterally adjusts a debit balance to zero or automatically refunds a credit balance.

If a statement was sent and returned as undeliverable. If the consumer later provides a new address, the creditor must resume sending statements. When a new address is provided, the obligation to send a statement arises if the new address is provided within a reasonable time before sending the statement. 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. (See § 226.13(a)(7).)

8. 14-day rule. The 14 day-rule in paragraph(b)(2)(ii) 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:

If current debits retroactively become subject to finance charges if the balance is not paid in full by a specified date.

If charges other than finance charges will accrue if the consumer does not make timely payments. Such charges include:

--Late payment charges.

--Charges for exceeding a credit balance.

--Fees for vendor's single interest insurance.

9. 14-day rule--exceptions. Footnote 4 does not excuse a creditor from the 14-day oligation if the failure to provide a periodic statement results from computer malfunction.

5(c) Basis of disclosures and use of estimates.

1. Legal obligation. The legal obligation is usually that embodied in the written agreement of the parties. For example:

If the contract provides for payment of a certain amount by the last day of each month, but payments are actually made biweekly under a voluntary payroll deduction plan, the monthly payment term is undoubtedly the legally enforceable contract term, and therefore represents the appropriate basis for disclosures.

If a creditor-employer offers a preferential employee rate, the correct periodic rate/annual percentage rate disclosure depends on what is legally enforceable. If the higher rate is the binding contract term, however, the creditor may additionally indicate any concession made in that term.

2. Estimates. 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. If the creditor makes estimated disclosures, redisclosure is not required 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. No new disclosure is necessary even if the exact appraisal fee is determinable before the consumer receives the first advance under the plan.

5(d) Multiple creditors; multiple consumers.

1. Providing disclosures. Under this provision:

Creditors must choose which of them will make the disclosures.

Each creditor in the plan is legally responsible for seeing that the disclosures are provided, and any one of them may be subject to liability for violations.

A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

2. Who must receive disclosures. While the disclosures may be made to either obligor on a joint account, the disclosure responsibilities are not satisfied by disclosures given only to an authorized user or to a surety or guarantor for a principal obligor.

5(e) Effect of subsequent events.

1. Events causing inaccuracies. Inaccuracies in open-end disclosures are not violations if attributable to events occurring after disclosure, such as:

The consumer's failure to perform his or her obligation to keep collateral insured, where the creditor then provides the coverage and charges the consumer for it.

An alteration in certain terms, such as the rates or classifications for credit insurance or the availability of a free-ride period.

Although such changes do not make the original disclosure improper, the creditor may be required by § 226.9(c) to provide a new disclosure for the change term.

2. Use of inserts. In the case of a term change, creditors 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: §§ 121 (a), (b), and (c); 122 (a) and (b); 124, 127 (a) and (b); 163(a).

Previous regulation: §§ 226.6 (a), (c), (d), (e), (f), (g), and 226.7 (a), (b), (c).

Other sections: §§ 226.4, 226.6, 226.7, 226.8, 226.9, and 226.14.

1981 changes: This section reflects several amendments to the act and incorporates a number of changes made to simplify the regulation. Type size requirements and all required terminology except "finance charge" and "annual percentage rate" are deleted. Disclosures may be made on more than one page of an integrated statement. The timing rule for initial disclosures has been revised to make clear that they must precede any transaction under the plan, including payments by the consumer. The rule for credit plans involving multiple creditors or multiple consumers has been simplified in accordance with the revised statute: only one creditor need make the disclosures, and to only one primarily liable consumer. Section 226.5(c) reflects new rules for the basis of disclosures and use of estimates.

Section 226.6--Initial disclosure statement.

6(a) Finance charge.

1. General. The finance charge disclosure must include the information set out in paragraphs (a)(1) through (a)(4). The material required by these paragraphs is closely related and provides one complete finance charge disclosure. For example, a statement that "the finance charge begins on the date of each advance" adequately discloses that there is no free-ride period. 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" necessarily discloses that there is a free period in the interim.

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 creditor may disclose that a consumer has 30 days from the closing date to pay the new balance before finance charges will accrue on any new purchases made on the account.

2. Free periods. In disclosing whether or not a free-ride period exists, a creditor need not use "free period," "free-ride period," or any other particular descriptive phrase or term.

Paragraph 6(a)(2).

1. Variable rate programs. In addition to disclosing the rates in effect at the time of disclosure, Footnote 12 requires disclosure of the circumstances under which a periodic rate would increase in a variable rate program. This refers to any specific contractual conditions, such as the expiration of certain time periods or changes in a particular index. Any limitations on rate increases, such as the maximum increase per year or the maximum increase over the duration of the plan, must also be disclosed (but a creditor need not disclose general rate limitations imposed by law, such as state usury ceilings). As to the effect of an increase, the creditor would disclose, for example, that the rate increase would result in higher monthly payments.

Paragraph 6(a)(3).

1. Explanation of balance computation method. Under paragraph (a)(3), a shorthand phrase such as "previous balance method" does not suffice. (See Appendix G-1 for model clauses.)

2. Allocation of payments. Disclosure about the allocation of payments is not required. For example, a creditor need not disclose that payments are applied first to finance charges, then to purchases, and then to cash advances, or that payments are applied to late charges, overdue balances, and finance charges before being applied to the principal balance.

Paragraph 6(a)(4).

1. Finance Charges. Disclosure is required of any other type of finance charge (other than a periodic rate) that may be imposed, such as minimum, fixed, transaction, and activity charges; required insurance; appraisal, investigation, or credit report fees; or any other charge described in the finance charge section (§ 226.4).

6(b) Other charges.

1. General. This paragraph requires

significant charges (that are not finance charges) to be disclosed.
2. Other charges. The followng are examples of other charges:
Late payment and over-the-credit-limit charges.
Fees for providing documentary evidence of transactions requested under § 226.13 (billing error procedures).
Charges imposed in connection with real estate transactions (§ 226.4(c)).
Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).
Taxes not imposed but for the credit plan, even if the taxes are imposed by governmental action.
Fees for membership or participation in 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 would not be an "other charge," even if membership was a criterion for eligibility in applying for credit.
3. Exclusions. The Following are not "other charges":
Fees charged for documentary evidence of transactions for income tax purposes.
Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs, statutory interest rates, and reinstatement or reissuance fees.
Premiums for voluntary credit life or disability insurance, or for property insurace that are not part of the finance charge.
Application fees under § 226.4(c)(1).
6(c) Security interest.
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."
2. Identification of property. Identification of the collateral by type is satisfied by stating, for example, "motor vehicle" or "household appliances."
3. Spreader clause. The fact that collateral for pre-existing loans with the institution is being used to secure the present obligation constitutes a security interest and must be disclosed. A specific indentification of that collateral is unnecessary but a reminder of the interest arising from the prior indebtedness is required. The disclosure may be accomplished by 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, the creditor would disclose that a security interest would be taken in household goods if the consumer's balance exceeded $1,000. If the creditor requires additional security not covered by the initial disclosures, a change-in-terms notice under § 226.9(c) is necessary.
6(d) Statement of billing rights.
See commentary to Appendix G-3.

References

Statute: § 127(a).
Previous regulation: § 226.7(a).
Other sections: §§ 226.2, 226.5, 226.7, 226.9, 226.13, 226.14, 226.16, and

Appendix G.

1981 changes: The rules for initial open-end disclosures are changed in several ways from the prior regulation. Whereas the previous regulation required a disclosure only if a free-ride period exists, the new regulation reflects the amended statute by requiring a positive statement that there is no free period if that is the case. Disclosures of the Comparative Index of Credit Cost and of the minimum periodic payment are eliminated. Security interest disclosures are reduced simply to an indication that there is a security interest and the property it covers. "Other charges" no longer include voluntary credit life or disability insurance or required property insurance premiums. Disclosure requirements for variable rate programs are now incorporated in the regulation, replacing Board Interpretation § 226.707 which provided optional disclosures. Board Interpretation § 226.706, on the allocation of payments, is incorporated in the commentary. The regulation no longer specifies the exact language to be used for the billing rights notice, although a model notice is provided in the regulatory appendix.

Section 226.7--Periodic statements.

General.

1. Abbreviations or symbols. A creditor may use abbreviations or symbols for any required disclosures on the periodic statement, as long as they are readily understandable, or coded, or otherwise explained on the periodic statement.

2. Multifeatured accounts. For a plan that involves several different types of credit transactions (such as purchases, loans, cash advances, or overdraft checking), required disclosures are as follows:

The previous balance (§ 226.7(a)) may be disclosed either as an aggregate balance for the account or as separate balances for each type of transaction. If separate balances are disclosed, a total previous balance is optional.

Identification of transactions (§ 226.7(b)) may be made by categorizing transactions, such as by grouping together sale transactions separately from cash advances.

A balance on which the finance charge was computed from a periodic rate (§ 226.7(e)) must be disclosed for each type of transaction to which different periodic rates or different balance computation methods are applied. A total balance for the entire account is optional.

The total amount of the finance charge attributable to the application of periodic rates (§ 226.7(f)) must be disclosed; an additional separate disclosure for each type of transaction is optional.

The historical annual percentage rate (§ 226.7(g)) may be separately stated for each type of transaction. If separate rates are given, a composite annual percentage rate for the entire plan is optional.

A new balance (§ 226.7(i)) may be disclosed for each type of transaction shown on the account. If separate new balances are disclosed, a total new balance is optional.

3. Accrued finance charges allocated from payments. If instead of debiting or adding finance charges to an account during a billing cycle, the amount of the finance charge that has accrued since the last payment is allocated from each new payment:

The previous balance (paragraph (a)) need not reflect finance charges accrued since the last payment.

No disclosure is required of finance charges (paragraph (f)) that have accrued since the last payment.

The new balance (paragraph (i)) need

not reflect finance charges accrued since the last payment.

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.

7(c) Payments and credits.

1. Identification. The periodic statement must disclose each credit to the account during the cycle, and the disclosure must include both the amount and crediting date and whatever additional information is needed to identify the entry.

2. Identification. Generally speaking, the creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.). But if a creditor uses the periodic statement to notify the consumer of a billing error correction under § 226.13(e)(2), the credit must be specifically identified as a response to the billing error.

3. Format. A creditor may list together (for example, in the same column) credits (payments, rebates, etc.) for the credit portion of an account (overdraft protection) with other types of credits (deposits to the checking account) as long as the entries are identified so as to inform the consumer which type of credit each entry represents.

4. Date. The crediting date need not be described as "crediting date," except that if two or more dates are disclosed for a single entry (for example, the posting date and the crediting date) the crediting date must be identified.

7(d) Periodic rates.

1. Rates required to be disclosed. 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.

2. Rates required to be disclosed. The disclosures regarding the rate and type of transaction relate only to rates that could have been imposed during the billing cycle. For example:

If a creditor is changing rates effective on the next billing cycle, the rates required to be disclosed under paragraph (d) are only those in effect during the billing cycle reflected on the statement.

If the consumer has an overdraft line that might later be expanded upon the consumer's request to include secured advances, the disclosures required by this section for the secured advance feature need not be given until such time as the consumer has requested and received access to the additional feature under the plan.

3. Multiple rates--same transactions. If two 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% and a required credit life insurance component calculated at .1% per month on the outstanding balance) the creditor may either

Disclose each periodic rate, the range of balances to which it is applicable, and the corresponding annual percentage rate for each periodic rate, or

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 APR. 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 nonimal annual percentage rate," or similar phrases.

5. Rate same as historical APR. When the corresponding rate is the same as the historical APR 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. Disclosure of the range of balances to which each periodic rate applies is not required in the case of a single rate account--for example, if 1% per month is applied to all outstanding balances.

7(e) Balance on which finance charge computed.

1. Limitation to periodic rates. This requirement is limited to balances on 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 $1500 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. For each type of credit transaction (such as purchases), only one balance amount need be disclosed if split rates were applied to different portions of the balance. For example, a creditor could disclose a balance of $700 even though a periodic rate of 1 1/2 % applied to the first $500, and a periodic rate of 1% to the remainder.

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. Daily periodic rate. 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:

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 cycled 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.

--As two or more average daily balance, each applicable to the daily periodic rates imposed, 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, (2) multiplying each of the results by the applicable daily periodic rate, and (3) adding these products together. For example, if the creditor imposes one daily periodic rate on balances over $500 and another daily periodic rate on balances over $500, the creditor would show average daily balances of $500 and $200 in an account which had a $700

balance of the entire billing cycle.
5. Explanation of balance computation method. This disclosure does not require that the consumer be given information sufficient to compute the balance. For example, if the balance computation method includes current purchases from the date they are posted to the account the posting date need not be disclosed. (Also see commentary to § 226.6(a)(3).)
6. Non-deduction of credits. In explaining the balance method, the creditor need not specifically include the dollar amount of credits not deducted in computing the finance charge balance. Listing the credits (§ 226.7(c)), together with an explanation of which credits will not be deducted in determining the balance, is sufficient.
7(f) Amount of finance charge.
1. Itemization. The itemization of the finance charge must include the total amount due to the application of periodic rates. If finance charges are imposed that are not due to the application of periodic rates, a total finance charge for the account is optional.
2. Itemization--different rates. Whether different rates are applicable to different types of transactions or to different balance ranges, the creditor need not itemize the finance charge attributable to each rate. For example, if a creditor charges 1 1/2 % per month on the first $500 of a balance and 1% per month on amounts over $500, it is not necessary to itemize the two components ($7.50 and $1.00) of the $8.50 charge.
3. Finance charges not added to account. A finance charge that is imposed but not included in the new balance because it is payable to a third party (such as required life insurance) must be shown on the statement as a finance charge.
4. Finance charges other than periodic rates. See the commentary to § 226.6(a)(4) for examples.
7(g) Annual percentage rate.
1. Rate same as corresponding APR. See commentary to § 226.7(d).
7(h) Other charges.
1. Identification. In identifying any non-finance charges actually imposed during the billing cycle, the type is adequately described as "late charge" or "membership fee," for example. (See commentary to § 226.6(b) for examples of other charges.)
2. Date. The date of imposing or debiting these charges need not be disclosed.
3. Format. Other charges may be listed with the transaction disclosures required by § 226.8.
4. Total. Disclosure of the total of other charges is optional.
7(i) Closing date of billing cycle; new balance.
1. Credit balances. See commentary to § 226.7(a).
7(j) Free-ride period.
1. Wording. Although the creditor is required to indicate any period the consumer may have without incurring additional finance charges, no specific wording is required. For example, "To avoid additional finance charges, pay the new balance before ------" would suffice.
7(k) Address for notice 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 assure that the

address is still clear and conspicuous is to include a precautionary instruction that telephoning will not preserve the consumer's billing error rights.

References

Statute: § 127(b).
Previous regulation: § 226.7(b)(1).
Other sections: §§ 226.2, 226.4, 226.5, 226.6, 226.8, 226.13, 226.14, and Appendix G.
1981 changes: This section generally corresponds to the old regulation, but with deletion of disclosures of the Comparative Index of Credit Cost and of minimum charges that may be applicable to the account. As provided in § 226.5, no specified terminology is required except for the terms "finance charge" and "annual prcentage rate." The requirement in § 226.7(c) of the previous regulation, as to location of disclosures, is deleted.
There are several changes or clarifications of rules for particular disclosures. Disclosure of creditors 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.
For creditors that deduct accrued finance charges from payments but do not add or debit them to the account balance, the commentary makes clear that neither the previous balance, the balance to which periodic rates are applied, or the new balance need reflect finance charges that accrue from the last payment to the closing date of the cycle.
The regulation now specifically requires on the periodic statement disclosure of "other charges" (non-finance charges related to the plan) that are actually imposed during the billing cycle.
Board Interpretations §§ 226.701, 226.703, and 226.706 have been incorporated, as well as prior staff interpretations on the need to disclose the rates actually applicable during the cycle.
Section 226.8--Identification of transaction.
General.
1. Which rules apply. This section 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 ivolves sale credit (purchases) or non-sale credit (cash advances).
A 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. Sale credit refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit to obtain goods or services from a merchant, whether or not the merchant is the card-issuer. Examples:
Premiums for credit insurance whether sold by the card issuer or another person.
The purchase of funds-transfer services from an intermediary.
3. "Non-sale credit." Non-sale credit refers to any form of loan credit.
Examples:
Overdraft checking.
The use of a "supplemental credit device" in the form of a check or draft.
Miscellaneous debits to account for mispostings, returned checks, and

similar entries.
4. Debit card with overdraft feature. When a consumer uses a debit card with an overdraft feature to purchase goods or services, and in doing so activates the overdraft, the credit portion of such a transaction may be viewed as a cash advance and may be disclosed as non-sale credit, even though a purchase is involved.
5. Actual copy. An "actual copy" does not include a so-called "facsimile draft" in which the required information is typed in, as opposed to a duplicate, carbon, or photocopy. If a facsimile draft is used, the creditor must comly with the rules applicable when a copy of the credit document is not furnished.
6. "Same or related persons." This term refers to:
Franchised or licensed sellers of a creditor's product or service.
Sellers who assign or sell open-end customer sales accounts to a creditor or arrange for such credit under a plan that allows the customer to use the credit only in transactions with that seller.
A person is not related to the creditor merely because:
The person and the creditor have an agreement by which the person is authorized to honor the creditor's credit card under the terms specified in the agreement.
The person and the creditor have a corporate connection, such as subsidiary-parent, if that connection is not obvious from the names they use. For example, where XYZ card-issuer owns the ABC hotel, the card issuer and the hotel are not "related."
7. Transactions resulting from promotional material. Creditors may use either the "related" or "non-related" rules in describing transactions with third-party sellers resulting from promotional material mailed by the creditor.
8(a) Sale credit.
1. Date--disclosure of only one date. If only one date is disclosed for a transaction, the creditor need not identify it as the "transaction date." If the creditor discloses more than one date, the creditor must identify each.
2. Date--disclosure of month and day only. The month and day is sufficient disclosure of the date on which the transaction took place, unless the posting of the transaction is so long delayed that the year is needed for a clear disclosure to the consumer.
3. When transaction "takes place." If the transaction is conducted by the consumer in person or on the phone, the transaction "takes place" on the calendar date 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 transaction takes palce on the date the amount is debited to the account. This might include, for example, monthly insurance premiums and auto club dues. For mail orders, a creditor may disclose either the invoice date or the debiting date as the transaction date.
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 may show 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. In either event, subsequent periodic statements should reflect each installment due, together with any other identifying information required by this section (such as the seller's name and

address in a three-party situation); the debiting date may be used as the date of the transaction.

8(a)(1) Copy of credit document provided.

1. Format. The information required by this section may appear either on the sale documents, or on the periodic statement.

8(a)(2) Copy of credit document not provided--creditor and seller same or related persons.

1. Property identification. The "brief identification" requirement contemplates some designation that will enable the consumer to reconcile the periodic statement with the consumer's own records.

It requires reasonable precision but not item-by-item descriptions. 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."

Identification of the transaction may be by a number or symbol that is related to an identification list printed on the statement.

2. Small creditors. Under Footnote 18, a further identification alternative is available to a creditor with fewer than 15,000 accounts. The creditor need count only its own accounts, and not those serviced by the same data processor or other shared service provider.

8(a)(3) Copy of credit document not provided--creditor and seller not same or related persons.

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 name may also be disclosed as:

A more complete spelling of a name that was alphabetically abbreviated on the credit document.

An alphabetical abbreviation of the seller's name on the periodic statement even if the name appears in a more complete spelling on the sales receipt.

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 of foreign country. If a creditor 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 17," "customer's home," "telephone order," "mail order."

8(b) Nonsale credit.

1. Date of transaction. If only one date 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 through 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 through 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 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.

Any readily understandable trade name for the credit program.

References

Statute: § 127(b)(2).

Previous regulation: § 226.7(k).

Other sections: §§ 226.2, 226.5 and 226.7.

1981 changes: Most of the changes are stylistic and organizational. Much of the specific detail on permissible ways to identify transactions has been deleted from the regulation itself and is now reflected in the commentary. Footnotes 16 and 18 implement the statutory amendment to § 127(b)(2) of the act. For descriptive billing of nonsale transactions, the regulation now permits use of the debiting date in all cases.

Section 226.9--Subsequent disclosure requirements.

9(a)(1) Annual statement of billing rights.

1. General. The creditor may provide this annual statement

By sending it in one billing period per year (for example, July) 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 commentary to Appendix G-3 and introduction to Appendices G and H.

9(a)(2) Alternative summary statement.

1. Changing from long-form to short-form notice and visa versa.

If a creditor has been sending the long-form annual statement, and subsequently decides to use the alternative summary statement, the first summary statement must be provided not later than the time the next long-form statement would have been required.

If a creditor has been sending the alternative summary with each periodic statement, and subsequently decides to furnish an annual notice, the first one must be provided with the next periodic statement. Thereafter, the timing of the annual statement is governed by paragraph 9(a)(1).

2. Substantially similar. See commentary to Appendix G-4 and introduction to Appendices G and H.

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") or the option to activate a Christmas deferred billing plan.
3. Same finance charge terms. If the new means of accessing the account is provided on the same finance charge terms as 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 make the finance charge disclosures from § 226.6(a) that are relevant to the device or feature.
4. Different finance charge terms. The creditor may satisfy the requirement by sending a complete set of new initial disclosures reflecting the terms of the added device or feature.
9(c) Change in terms.
1. State law issues. This provision does not address the following issues, which are controlled by state law:
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.
2. Change in billing cycle. Whenever a creditor changes a consumer's billing cycle, it must give a change in terms notice if the change affects any of the initially disclosed terms; for example, the creditor 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. Changes not requiring notice. The following do not require a change-in-terms notice:
An increase 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. 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.
3. Timing. The rule that the change in terms notice 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 prior to the billing cycle in which the change is to be implemented.
4. Timing. Advance notice is not necessary--that is, a notice of change in terms is required, but it may be sent fewer than 15 days before the effective date of the change--in two circumstances:
If there is an increased periodic rate or finance charge attributable to the consumer's delinquency or default (for example, if the creditor supplies vendor's single interest insurance coverage because of the consumer's failure to

maintain casualty insurance on the collateral).
If the consumer agrees to the change (for example, an agreed upon addition or substitution of collateral). But a consumer's use of the account, which might imply acceptance of its terms under state law, is not an "agreement" between the consumer and the creditor for purposes of this section.
5. Form. A complete new set of the initial disclosures containing the changed term complies with this provision 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.
9(c)(2) Notice not required.
1. Skip features. Where a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges (in effect, terms are changed twice: once by reduction or deferral, and then by resumption of the original terms--for example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation) no change in terms is required either prior to the reduction or upon resumption of the higher rates if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction.

References

Statute: § 127(a)(7).
Previous regulation: § 226.7 (d), (e), (f), and (j).
Other sections: §§ 226.4, 226.5, 226.6, 226.7, and Appendix G.
1981 changes: Paragraph (a) reflects the statutory change that now requires the statement of billing rights to be provided only once a year. The provision also changes the prior regulation by permitting the notices to be sent, in certain circumstances, at staggered intervals rather than all in one billing period. The verbatim text of the annual notice is no longer required, and creditors may use any "substantially similar" version. The substance of Board Interpretation § 226.708 has been incorporated in the commentary.
Paragraph (b) corresponds to § 226.7(j) of the prior regulation. It reduces the number and extent of disclosures when supplemental credit devices or new credit features are added to an existing open-end account. Disclosures are required only if the new device or feature is added more than 30 days after the initial disclosures, or if the finance charge terms differ.
Paragraph (c) substantially changes the rules under old § 226.7(f). 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 are reduced: change in terms notices are no longer required for changes described in § 226.9(c)(2). But the provision reverses Board 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.

Paragraph (d) corresponds to prior § 226.7(e), but no longer requires the point-of-sale merchant to disclose the amount financed and annual percentage rate figured in accordance with the closed-end credit provisions.
Furthermore, this disclosure may be made orally by the person honoring the card.

Section 226.10--Prompt crediting of payments.

10(a) General rule.

1. Crediting date. This paragraph does not require a creditor to post the payment to the consumer's account on a particular date. The creditor is only required, as a general rule, to credit the payment as of the date of receipt.

2. No impact on finance charge. A creditor need not credit as of the date of receipt if the failure to do so does not result in additional finance or other charges. For example:

If a creditor uses the adjusted balance method of computing finance charges, payment at any time before the closing date has the same effect on the amount of the finance charge, and the creditor need not credit payments as of the date of receipt. A payment would have to be credited to the account, however, before the closing date of the cycle so as to avoid additional charges in that or subsequent cycles.

3. Date of receipt. Payment is received when 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 transfers are credited to an asset account from which payments are then 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 a 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, a payment is received when the creditor gets the third-party payor's check or other transfer medium, such as an electronic fund transfer.

4. Implied guidelines for payments. In the absence of specified requirements (§ 226.10(b)) for making payments:

The "date of receipt" is the date that payment is made at any location where the creditor conducts business, as long as the payment is received before the creditor's close of business.

Payment may be by cash, money order, draft, or other similar instrument in properly negotiable form.

10(b) Specific requirements for payments.

1. Payment requirements. A creditor might, for example:

Set a cut-off hour for payment to be received, or set different hours for payment by mail and payments made in person.

Specify that only checks or money orders should be sent by mail.

Specify that payment is to be made in U.S dollars.

Specify one particular address for receiving payments

2. Payment requirements--limitations. Requirements must be reasonable; it should not be difficult for most consumers to make conforming payments:

It would not be reasonable to require that

all payments be made in person and in cash between 10 a.m. and 11 a.m., since this would require consumers to take time off from their own jobs to deliver payments.
3. Acceptance of non-conforming payments. If a 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.
10(c) Adjustment of account.
1. Charges imposed in error. If a creditor's failure to credit a payment as required results in the impostion of any charge for that cycle, the creditor must make a compensating adjustment to the consumer's account during the following cycle. For example, if a late payment charge is erroneously imposed in one cycle (because payment was not timely credited), the next periodic statement should reflect a credit in the amount of that late payment charge. If the late posting also resulted in the accrual of additional finance charges. they too must be credited in the subsequent cycle.

References

Statute: § 164.
Pervious regulation: § 226.7(g).
Other sections: §§ 226.2, 226.7.
1981 changes: The general rule set forth in this provision is substantively unchanged from the prior regulation. Much of the explanatory detail has been deleted from the regulation but is reflected in the commentary. Under the prior regulation, the creditor had to credit non-conforming payments promptly, with an outside limit of five days. The revised regulation simply allows five days in which to credit non-conforming payments. The five days in which to credit is available whenever the creditor accepts payment that does not conform to the creditor's disclosed specifications, in contrast to the prior regulation, which only allowed deferred crediting for payments made at the wrong location.
Section 226.11--Treatment of credit balances.
1. Timing of refund. Nothing in this section prohibits a creditor from refunding credit balances to the consumer's account in less than 6 months, even in the absence of a request.
2. Amount of refund. The amount that must be given to the consumer is the amount of the credit balance on the account 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.
3. Good faith effort to refund. If any part of a credit balance has remained in the account for more than six months, the creditor must take positive steps to return it to the consumer. This includes making attempts to reach or trace the consumer through the consumer's last known address or telephone number, or both if necessary. The creditor may undertake to return credit balances before six months have expired, but such an attempt does not excuse the creditor from the obligation to make a good faith effort after six months.
5. Unrefundable credit balances. This section imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the unrefundable credit balance is to be determined under other

applicable state or federal law.

References

Statute: § 165.
Previous regulation: § 226.7(h).
Other sections: § 226.7.
1981 changes: The creditor's duty to refund credit balances under the old regulation applied only to "excess payments"; the revised regulation reflects the amended statute and imposes duties on a creditor whatever the source of the credit balance. The revised regulation also 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 provided in the old 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 old 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 six months.

Section 226.12--Special credit card provisions.

12(a) Issuance of credit cards.

1. Scope. The rules in this paragraph restrict the issuance of unsolicited credit cards, whether the card is intended for consumer, business, or any other purposes. This and the following paragraph are therefore exceptions to the general rule (see §§ 226.1 and 226.3) that the regulation applies only to consumer credit.

12(a)(1) Initial issuance.

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 a 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 account holder 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 different or additional features from 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, where 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. 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. The additional cards may be imprinted in either A's name or in the names of B and C.
No liability for unauthorized use, 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 may be imposed on A.
Whether B and C can be held liable on the account generally is a matter of state law.
7. Issuance of non-credit cards. The issuance of an unsolicited device that is not, but may become, a credit card, is not prohibited provided:
The device has some substantive purpose other than obtaining credit, such as access to non-credit services offered by the issuer;
It cannot be used as a credit card when issued; and
A credit capability will be added only on the recipient's request.
For example, a card issuer could send a check guarantee card on an unsolicited basis, but could not add a credit feature to that card without the customer's specific request. The re-encoding of an EFT access device or other existing card that had no credit privileges when issued would be appropriate after the customer has specifically requested a card with credit privileges. Similarly, the card issuer may add a credit feature, for example, by reprogramming the issuer's computer program or automated teller machines, or by a similar program adjustment.
12(a)(2) Renewal and substitution.
1. Renewal. "Renewal" generally contemplates the regular replacement of existing cards for security reasons or to implement new technology or systems. It also includes the re-issuance of cards that have been suspended temporarily, but does not include the reactivation of a closed account if the prior card had expired, been cancelled, or was otherwise rendered unusable.
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.
Added new features to the account.
For example, the substitute card might be usable for obtaining cash advances through automated teller machines, in addition to making purchases and obtaining cash advances at teller widows as could be done with the original card. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.)
3. Substitution--purchases of accounts. "Substitution" also occurs 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. Replacement for 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. The credit card itself must meet the tests for an "accepted credit card." It cannot be issued in these circumstances without a request or application.
5. Permissible renewals and substitutions. Both renewals and substitutions of credit cards may be made on an unsolicited basis regardless of whether:
The card is issued by the same or a successor card issuer.
The card has credit or other features the same as or different from the original credit card.

The card issuer substitutes a card user's name on the renewal or substitute card for the cardholder's name appearing on the original card.

6. One-for-one rule. An accepted card may be replaced by no more than one renewal or substitute card. For example, a card issuer may not replace a credit card permitting purchases, in-person cash advances and ATM cash advances with two cards, one for the purchases and cash advances and another for the ATM transactions.

7. One-for-one rule--exception. The regulation does not prohibit a card issuer from replacing a debit/credit card with one card that could be used for credit purchases and cash advances and another card with only debit functions (or debit functions plus an associated overdraft capability).

8. Continuity of merchant base. To qualify as a permissible renewal or substitution, the new card must be honored by at least one of the persons that honored the original card.

9. Methods of terminating replaced card. The card issuer need not physically retrieve the original card, provided:

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 old card is voided in some other way.

10. Incomplete replacement. If Card A is one type of national credit card and Card B is another, replacement of two Card As on an account by one Card A and one Card B is not permissible with regard to card B without a request.

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).

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 by reference to applicable state 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 car issuer is notified, whichever is less.

12(b)(2) Conditions of liability.

1. Disclosure of liability and means of notifying issuer. This basic disclosure of potential liability need not be given at any particular time or in any particular form. Some of the ways in which it can be given:

On the credit card itself.

On periodic statements.

With the initial disclosures under § 226.6

At any other time preceding the unauthorized use.

2. means of identifying cardholder or user. The issuer must provide some method whereby the cardholder or the auhtorized user can be identified. This could include, for example:

Signature on the card

Photograph on the card.

Fingerprint on the card.

Electronic or mechanical confirmation.

3. Identification by magnetic strip. A magnetic strip on the card that merely verifies the account status is not a proper

means of identification. But if the magnetic strip must be used in conjunction with a secret code or the like, a sufficient means of identification exists. Nor is there sufficient identification where a "pool" or group card, issued to a corporation and signed by a corporate agent, is intended to be used by other employees for whom the card provides no means of identification.

4. Separate identification of each user. It is not necessary under paragraph (b)(2) for each card issued for an account to be embossed or signed in the name of the individual that will use it, or that each user be separately identifiable. Where, for example, spouse A requests cards for both A and spouse B (making B an authorized user), this requirement is satisfied if B's card permits identification of either A or B (for example, by use of a secret code number unique to A and B).

5. Transactions not involving card. A cardholder bears no liability under this section when the card itself is not presented. For example, merchandise may be purchased by telephone, using a credit card account number only, by a person without authority to do so. The cardholder's account number may be widely available. 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.

6. Issuer's option not to comply. A card issuer that chooses not to impose any liability for unauthorized use on cardholders need not comply with these notice and identification requirements.

12(b)(3) Notification to card issuer.

1. To whom 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 to the person, address, or phone number disclosed by the card issuer under § 226.12(b)(2)(ii).

2. Who must provide notice. It is not essential, under this provisoin, that notice of loss, theft, or possible unauthorized use be initiated by the cardholder. Notice from an authorized user, a family member, or anyone else 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.

12(b)(5) Business use of credit cards.

1. Agreement for higher liability for business use cards. A card issuer may not rely on this provision 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).

12(c) Right of cardholder to assert claims and defenses against card issuer.

1. Relationship to § 226.13. This 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 this one. A 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 paragraph (c). Conversely, a consumer may pay a disputed balance and thus have no further right to assert claims and defenses under this section, but still may assert a billing error under § 226.13 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" under this section and a billing error under § 226.13.

2. Situations excluded and included. A consumer may assert claims or defenses under this provision 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:

A purchase made with special cash advance checks.

Use of a credit card to obtain a cash advance, 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.

Purchases made by use of a check guarantee card in conjunction with a special cash advance check.

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 under Footnote 24 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:

That amount may be reported as disputed.

Nothing in this provision prohibits the card issuer from undertaking its normal collection activities for delinquent accounts.

This provision does not require a card issuer to correct an adverse credit report if the consumer does not assert a claim or defense until after the report was made.

12(c)(3) Limitations.

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. When the merchant is in bankruptcy proceedings, this section does not:

Require the consumer to file a claim in those proceedings.

Require the consumer to seek satisfaction from the manufacturer of the goods involved.

2. Amount limitation. The $50 criterion refers to the total amount of credit extended in any single transaction, even though that total may consist of several items each of which had a price under $50, and even though the dispute relates to only a part of the transaction.

3. Geographic limitaition. The question of where a transaction occurs (as in the case of mail or telephone orders, for example) is to be determined under state law.
4. Merchant honoring card. The exceptions to the amount and geographic limitations do not apply where the merchant merely honors, or indicates through signs or advertising that it honors, a particular credit card.
12(d)(1) Offsets by card issuer.
1. "Holds" on accounts. "Freezing" or placing a hold on funds in a cardholder's deposit account, which is the functional equivalent of an offset, would contravene this rule, unless done in the context of one of the specified exceptions to the offset prohibition. For example, if the terms of a security interest permitted a card issuer to place a hold on the funds subject to the security interest, the hold would not violate the offset rule.
2. Types of indebtedness; overdraft accounts. The prohibition applies to any indebtedness arising from consumer credit transactions, including accured finance charges and other charges on the account. It would also include balances arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if a consumer writes a check that accesses an overdraft line of credit, the resulting indebtedness is subject to the prohibition of offsets since it is incurred through a credit card plan, even though the consumer did not use an associated check grarantee or debit card.
3. When prohibition applies in case of termination of account. The prohibition against set-off applies even after the card issuer terminates the cardholder's credit card privileges, if the indebtedness was incurred prior to termination. If the indebetedness was incurred after termination, the prohibition does not apply.
4. Funds intended as deposits. This provision also would prohibit a card issuer's applying funds tendered by the consumer as a deposit against the consumer's credit card account.
12(d)(2) Exceptions.
1. Scope of exceptions. In general, the card issuer may obtain the consumer's deposit-account funds only by using procedures equally available to other creditors. Note that if a card issuer obtains a judgment against a cardholder, and if the terms of the judgment so permit, the creditor may set off the indebtedness against the cardholder's deposit account.
12(d)(3) Automatic payment plans.
1. Scope of exception; additional exceptions. This provision permits plans under which the card issuer may--with the cardholder's written, signed or initialed authorization--periodically apply portions of a deposit account to the outstanding credit card indebtedness. This provision does not prohibit
Debiting on the cardholder's specific request rather than debiting the cardholder's deposit account 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).
Automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).
12(e) Prompt notification of returns and crediting of refunds.
1. Explanation of provision; when time periods begin to run. If a merchant (that is not itself the card issuer) generates a credit for a refund, it must send a credit

statement to the card issuer within 7 business days after accepting the return or forgiving the debt. The 7-day period only begins to run when the merchant "accepts" the return or "forgives" the debt. The time of acceptance or forgiveness must be determined under applicable state law.
2. Normal channels. "Normal channels" refers to any network or interchange system used for the processing of the original charge slips.

References

Statute: §§ 103(1), 132, 133, 135, 162, 166, 167, 169, 170.
Previous regulation: § 226.13.
Other sections: § 226.13.
1981 changes: The issuance rules (paragraph (a)) are substantially unchanged. They make clear that cards may be sent not only to the person making the request but 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 regarding conditions of liability are as follows: the requirement that the cardholder be given a postage-paid, pre-addressed card or envelope for notification of loss or theft has been deleted (corresponding to an amendment to the act); the required disclosure of maximum liability and of means of notification has been simplified; and the required provisions of a means of identification has been relaxed 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 a card issuer, rather than only the cardholder.
The offsets section incorporates the staff position on consensual security interests, which has been modified to provide that the security interest need no longer be limited to an agreed-upon amount. The separate promptness standard, which used to apply in addition to the 7-business-day and 3-business-day standards, has been deleted from the provision governing prompt notification of returns. A staff interpretation concerning the use of clearing accounts is not incorporated in the text of the regulation.
Finally, a cross reference to Regulation E, Electronic Fund Transfer, has been added.
Section 226.13--Billing error resolution.
General
1. General prohibitions. Footnote 27 prohibits a creditor from responding to a consumer's billing error allegations by accelerating the debt or closing the account, and reflects protections authorized by § 161(d) of the Truth in Lending Act and § 701 of the Equal Credit Opportunity Act. This footnote also alerts creditors that failure to comply with the error resolution procedures may result in the forfeiture of disputed amounts as prescribed in § 161(e) of the act. (Any failure to comply may also be a violation subject to the liability provisions of § 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 for any aspect of the error resolution process (including any documentation supplied) and must credit the consumer's account if such a charge was assessed pending resolution. The Truth in Lending Act does not address whether a creditor may impose a charge for the investigation of a billing error if no error occurred.
13(a) Definition of billing error.

Paragraph 13(a)(1).

1. Actual, implied or apparent authority. Whether use of a credit card is authorized is determined by applicable state law.

Paragraph 13(a)(3).

1. General. Paragraph (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 had refused to take delivery of goods on grounds 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.

It does not include a dispute relating to the quality of property or services that the consumer does accept. Whether goods or services have been accepted is determined by state law.

Paragraph 13(a)(5).

1. Computational errors. Paragraph (a)(5) covers periodic statement errors that affect transaction entries or other entries such as the finance charge, payments, or late payment charges. For 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 under this section.

Paragraph 13(a)(6).

1. Requests for clarification--billing errors. Paragraph (a)(6) includes as billing errors requests for "additional clarification" about credit extensions shown on the periodic statement. This would include requests for copies of transaction documents or for further identification of the particulars of a transaction, when it appears that the consumer is questioning the accuracy of information supplied on the periodic statement. See commentary to § 226.3(b)(3). A creditor may ask about the reason or purpose behind the consumer's documentation request.

2. Requests for clarification--not billing errors. No billing error has been alleged if the consumer merely requests copies of documents for purposes such as

Tax preparation.

Recordkeeping.

13(b) Billing error notice.

1. Withdrawal. The consumer's withdrawal of a billing error notice under Footnote 28 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 under paragraph (a)(7), 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 is expected to appear. For example, if a seller tells a consumer late in the July cycle that a credit is being issued to the account, the consumer might not expect the credit to be reflected until the September statement.

3. Transmittal. Transmittal by the creditor includes the practice, at the consumer's request, of making a periodic statement available for pick-up at the creditor's office.

Paragraph 13(b)(2).

1. Identity of the consumer. Although paragraph (b)(2) requires that the consumer's billing error notice permit the creditor to identify the consumer and the account number, it does not require both name and account number to appear in the notice, merely that the information supplied enable the creditor to identify the consumer's name and account.

Paragraph 13(b)(3).

1. Documentation requests. Requests for documentation such as receipts or sales slips, unaccompanied by an allegation or error or a request for additional clarification under paragraph (a)(6), do not constitute a billing error notice under paragraph (b)(3).

13(c) Time for resolution; general procedures.

1. Temporary or provisional corrections. A creditor may make a temporary or provisional correction to the consumer's account in response to a billing error notice, but is not excused from complying with the remaining error resolution procedures within this paragraph's time limits.

2. Correction without investigation. A creditor is free to correct a billing error in the manner and amount asserted by the consumer without 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 two actual billing cycles occurring subsequent to receipt of the billing error notice, not a measure of time equaling any two 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 two full billing cycles to resolve the error.

13(d) Rules pending resolution.

1. Disputed amount. The disputed amount is the specific dollar amount alleged by the consumer as a billing 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 paragraph (a)(7), the entire balance owing would be the disputed amount.

2. 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.

3. Right to withhold payment. While the creditor must state on the periodic statement that payment of any disputed amount is not required pending error resolution, this disclosure need not appear in any specific place on the statement and it need not state the specific amount that the consumer may withhold. The creditor may preprint on its periodic statement forms a statement that payment of any disputed amount is not required pending resolution.

4. Imposition of additional charges on

undisputed amounts. The consumer's withholding of the disputed amount from the total bill cannot subject the undisputed portion to the imposition of additional finance or other charges. For example, on an account with a 30-day free-ride period, a consumer who disputed a $2 item out of a total bill of $300 and paid $298 within the free-ride period would not lose the free ride as to the undispute portion, even if the creditor determines later that no billing error occurred.

Paragraph 13(d)(1).

1. Automatic payment plans. 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 crdit 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.

Paragraph 13(d)(2).

1. Report of dispute. Although paragraph (d)(2) prohibits a creditor or its agent from issuing 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 an 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 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 law.

13(e) Procedures if billing error occurred as asserted.

1. Correction of error. The phrase "as applicable" is used in paragraph (e)(1) to make clear that the necessary corrections vary with the type of billing error that occurred. For example, a misidentified transaction is cured by properly identifying the transaction and crediting related finance and other charges. The creditor does not have to cancel the amount of the underlying obligation incurred by the consumer.

2. Form of correction notice. In addition to correcting the error, the creditor is required under paragraph (e)(2) to provide the consumer with a correction notice. This written notice may take a variety of forms. It may be sent separately, or it may be included with or on a periodic statement that is mailed within the time for resolution. Since all disclosures must be clear and conspicuous, the amount of the billing error must be specifically identified when the creditor uses the periodic statement to satisfy the correction notice requirement. 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. A "different billing error" would 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 (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. Creditor's explanation. The written explanation under paragraph (f)(1):

May be included on or with a periodic statement that is mailed within the time for resolution. If the explanation is provided on a periodic statement, the general "clear and conspicuous" disclosure requirement continues to apply. For example, if a different billing error occurred, credits of any disputed amount or related finance or other charges reflected on a periodic statement must be clearly identified as corrections.

May be sent separately. If a separate explantion is provided, the enclosed or subsequent periodic statement reflecting the corrected amount may simply identify it as a "credit."

May be combined with the creditor's notice to the consumer of amounts still owing, which is required under paragraph (g)(1), provided it is sent within the time limit for resolution.

Paragraph 13(f)(3).

1. Correction of error. See commentary to paragraph § 226.13(e).

13(g) Creditor's rights and duties after resolution.

Paragraph 13(g)(1).

1. Written notice. Paragraph (g)(1) requires the creditor to send a written notice informing the consumer of how much is still due and when it is payable. Amounts the consumer still owes may include both minimum periodic payments and related finance and other charges that accrued during the resolution period. See commentary to § 226.13(d).

2. Notice of amount owed--timing. While it need not send the notice of amount owed within the time period for resolution, the creditor is under a duty to send the notice promptly after resolution of the alleged error. The notice may be sent:

Separately.

On or with a periodic statement.

Combined with the billing error explanation required under paragraph (f)(1). If the creditor combines the notice of the amount owed with the explanation, the combined notice must be provided within the item limit for resolution.

Paragraph 13(g)(3).

1. Time for payment. Paragraph (g)(3) restrictions on the creditor's ability to report the consumer's account as delinquent are contingent on giving the consumer adequate time to pay after the resolution of the billing error. If the creditor in its initial disclosures disclosed a free-ride period greater than 10 days, the consumer cannot be reported as delinquent if the required payment is made at any time within that period. The creditor uses the usual triggering event to toll the time for payment. If no free-ride period is normally given, than the consumer has 10 days to pay (measured from receipt of the notice of the amount owed) before the creditor may issue an adverse credit report.

Paragraph 13(g)(4).

1. Credit reporting. Under paragraphs (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 monthly updates need not transmit corrective information immediately by an unscheduled computer or magnetic tape. It may provide the credit bureau with the correct information by letter or other commerically reasonable means.

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 need only provide the consumer with the name and address of the credit bureau.

13(i) Relation to EFT Act and Regulation E.

1. Application to EFT/credit transactions: This provision is designed to ease compliance for financial institutions that extend credit incident to an electronic fund transfer that is subject to the Board's Regulation E. For example, if a consumer withdraws money at an ATM machine and activates an overdraft credit feature on the checking account.

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.

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.

The creditor must credit the consumer's account under § 205.11(e), with any finance charges incurred as a result of the alleged error.

The provisions of § 226.13 (d) and (g) would continue to apply to the credit portion of the transaction.

References

Statute: §§ 161 and 162.

Previous regulation: §§ 226.2(j), 226.2(cc), and 226.14.

Other sections: §§ 226.6, 226.7, and 226.8.

1981 changes: This section reflects a complete restructuring of the error resolution provisions. The new organization of the provisions, for example, arranges the creditor's responsibilities in chronological sequence. There are also several substantive changes from the previous regulation.

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 old regulation immunized a creditor from liability for inadvertently taking collection action or making an adverse credit report within two days after receiving a billing error notice; these provisions are deleted from the revised regulation. The new regulation also deletes requirements about the location of disclosures "on the face" of the periodic statement for payment of disputed amounts and permits a creditor to pre-print notices on the periodic statement concerning payment of disputed amounts.

The revised section changes the old rule 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 new regulation, the card issuer must prevent an automatic debit if it receives a billing error notice up to three days before the scheduled payment date (provided the notice is received within the 60 days that the consumer has to assert the error).

After resolution, the new regulation requires the creditor to allow the greater of 10 days or the free-period previously disclosed in which to pay parts of the disputed amount still owing. The old regulation required a creditor to give the consumer the greater of the customary free-ride period or ten days.

The new regulation adds a provision addressing the relationship between the error resolution provisions of Regulation Z and Regulation E (Electronic Fund Transfers).

Former § 226.14(f), which implemented the statutory forfeiture penalty, has been deleted. A reference to the penalty is in Footnote 27.

Section 226.14--Determination of annual percentage rate.

14(a) General rule.

1. Tolerance. The tolerance of 1/8 of one percentage point above or below the APR applies to any required disclosure of the APR. This includes the disclosure in:

Initial statements.

Periodic statements.

Change in terms notices under § 226.9(c).

Advertising under § 226.16.

There is not explicit tolerance for any periodic rate as such, and a disclosed periodic rate may vary from precise accuracy only to the extent that its annualized equivalent is within the tolerance permitted by this section.

2. Rounding. The provision does not require that the APR be calculated to any particular number of decimal places; rounding is permissible within the 1/8 of one percent tolerance. For example, an exact APR of 14.33333% may be stated as 14.33% or as 14.3%, or even as 14 1/4 %; but is could not be stated as 14.2% or 14%, since either of these vary by more than the permitted tolerance.

3. Finance charges. The regulation does not prohibit creditors from assessing finance charges on balances that include prior, unpaid finance charges. However, state law may prohibit imposing new finance charges on prior, unpaid charges.

14(b) APR for initial disclosures, advertising.

1. Corresponding APR. For initial disclosures (under § 226.6) and for advertising (under § 226.16) the APR 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 APR) is prospective and does not involve any particular finance charge or periodic balance.

14(c) APR for periodic statements.

1. This privision clarifies that, in disclosing the corresponding APR for each periodic rate (under § 226.7(d)), the APR is calculated by simply 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 APR because of the inclusion of fixed, minimum, or transaction charges. Paragraphs (c)(1) through (c)(4) state the computation rules for the historical rate.

2. Periodic rates. Paragraph (c)(1) applies if the only finance charge imposed is by application of a periodic rate to a balance. The creditor may compute the APR 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 APR where different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of 1 1/2 % 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 x .015) plus $3.00 (300 x .01), for a total finance charge of $10.50. The APR 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. Paragraph (c)(2) applies if the finance charge imposed includes a charge not due to the application of a periodic rate. For example, if a creditor imposes a minimum $1 finance charge on all balances below $50, and the consumer's balance was $40 in that period, the creditor would disclose an APR of 30% (1/40 x 12).
4. No balance. Footnote 32 would apply, for example, to a plan in which no free ride is given for advances even if payment is made in full on a monthly basis. If the consumer pays the balance on May 19 and has no transactions thereafter, the June statement might reflect a finance charge with no balance. No APR can be determined, so none need be disclosed for the June statement.
5. Transaction charges. The transaction charges noted in paragraph (c)(3) include, for example,
A loan fee imposed on a particular advance.
A point-of-sale discount for payment by cash rather than credit card if the discount is a finance charge and the card issuer is not excused from disclosure under § 226.9(d)(2).
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. For further explanation and examples of how to determine the components of this formula, see Appendix F.
Charges related to opening account. Footnote 33 is applicable to both paragraphs (c)(2) and (c)(3). The charges involved here do not relate to a specific transaction or activity on the account, but relate solely to the opening of the account. Inclusion of these charges in the APR calculation would result in significant distortions of the APR and delivery of a possibly misleading disclosure to consumers. This rule 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.
7. Small finance charges. § 226.14(c)(4) gives the creditor an aoption to paragraphs (c)(2) and (c)(3) if small (50 cents or less) minimum or fixed fees are involved. For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an APR of 30% under the rule in paragraph (c)(2), the creditor may disclose an APR of 18% if the periodic rate generally applicable to all balances is 11 1/2 % per month. This option is consistent with the provision in Footnote 11 to §§ 226.6 and 226.7 permitting a creditor to disregard the effect of minimum charges in disclosing the ranges of balances to which periodic rates apply.
14(d) Calculations where daily periodic rate applied.

1. Quotient methods. This provision addresses use of the quotient method to determine the annual percentage rate, and a daily periodic rate(s) to determine some or all of the finance charge. Since the usual quotient formula does not work when a daily rate is being applied to a series of daily balances, this paragraph gives the creditor two alternatives. Either formula produces accurate APRs for purposes of this regulation.

References

Statute: § 107.
Previous regulation: § 226.5(a).
Other sections: §§ 226.6 and 226.7.
1981 changes: The provision reflects the statutory amendment incorporating a 1/8 of one percent tolerance for annual percentage rates. The provision in the prior regulation dealing with finance charges imposed on specified ranges or brackets of balances was deleted. A new footnote clarifies that loan fees, points, or similar charges unrelated to any specific transaction are not to be computed into the APR. Board Interpretations §§ 226.501 and 226.506 are incorporated.
Section 226.15--Right of rescission.
15(a) Consumer's right to rescind.
1. Coverage. This section applies to transactions in which:
A security interest arises from the credit transaction.
The security interest is taken in a consumer's dwelling.
The dwelling is that consumer's principal place of residence.
2. Transactions not covered. If a credit extension is otherwise exempt from Regulation Z, it does not become subject because of the nature of 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.
3. Transactions giving rise to right. Under an open-end credit plan secured by the consumer's principal dwelling, the general rule is that the right of rescission arises with each transaction on the account, including:
Each credit extension.
Opening the account.
Adding a security interest in the consumer's principal residence to an existing account.
Increasing the dollar amount of security taken in the dwelling to secure the plan.
Increasing the credit limit. 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 upon opening the account and (except as noted in paragraph (a)(l)(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 again has the right to rescind.
4. Exceptions. Although as a general rule the consumer has the right to rescind with each transaction on the account, § 125(e) of the amended act provides that until March 31, 1985, the creditor need not provide the right to rescind at the time of each individual credit extension made under a secured open-end credit plan, if the extensions are made in accordance with a previously established credit limit for the plan. After March 31, 1985, the consumer will have the right to rescind each subsequent extension made under an open-end credit plan secured by the consumer's principal dwelling. Extensions of credit made prior to March 31, 1985, will not be affected by the

subsequent rescission rights.
5. Security interest arising from transaction. The security interest must be retained as part of the credit transaction, as in the following examples:
A security interest is acquired by a contractor who is also extending the credit in the transaction.
A mechanic's lien or materialmen's lien 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 retained as part of the credit transaction in the following cases:
If a materialmen's mechanic's lien is obtained by a contrctor who is not a party to the credit transaction but merely receives the proceeds of the consumer's cash advance.
If all security interests that may arise in connection with the credit transaction are validly waived.
If the creditor obtains a lien and completion bond that has the effect of automatically satisfying all liens against the consumer's dwelling as a result of the credit transaction.
Although liens arising by operation of law are not considered security interests for disclosure purposes 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 dwelling is not a required disclosure under § 226.6(c), it may still give rise to the right of rescission.
6. Consumer. The right of rescission runs to any consumer whose principal dwelling is subject to the security interest. To be a "consumer" within the meaning of § 226.2, that person need not be a signatory to the credit agreement, but must at least have an ownership interest in the dwelling that would be encumbered by the creditor's security interest. For example, if one spouse enters into a secured plan without the participation of the other spouse, the latter is a "consumer" if the ownership interests of both spouses are subject to the security interest.
7. Principal dwelling. A dwelling, as defined in § 226.2, can include 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. The structure must be the consumer's principal dwelling at the time of the credit transaction. Thus, a transaction secured by a second home that is not currently being used as the consumer's principal place of residence is not rescindable, even if the consumer intends to retire there sometime in the future. Similarly, a vacation home used as collateral--if it is not the consumer's principal dwelling--does not give rise to the right of rescission.
8. Consumer's exercise of right. The consumer's exercise of the right of rescission must be in writing but need not be on the form the creditor gives the consumer under paragraph (b). Whether notice of rescission is sent by mail, telegram, or other means, the time period for the creditor's performance under paragraph (d)(2) does not begin to run until the notice has been received. The creditor may designate an agent to receive the rescission notice as long as the agent's name and address appear on the notice provided to the consumer under paragraph (b).
9. Rescission period. The period within which the consumer must exercise the right to rescind runs for three business days from the last of the following three

events:
The transaction that gives rise to the right of rescission.
Delivery of all material disclosures that are relevant to the plan.
Delivery of the required rescission notice.
For example, if an account is opened on June 1 and the disclosures and notice were given on May 31, the rescission period expires at midnight of the third business day after June 1. If the disclosures were given and the account opened on June 1 and the rescission notice given on June 3, the rescission right expires at midnight of the third business day after June 3. The consumer must have placed the rescission notice in the mail, filed it for telegraphic transmission, or delivered it to the creditor's place of business within that time in order to exercise the right.
10. Material disclosures. The creditor must provide sufficient information to satisfy the requirements of § 226.6 for the listed disclosures. A creditor may satisfy the requirement of providing the material disclosures 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) does not prevent the running of the rescission period, although that failure may result in civil or administrative sanctions.
11. Material disclosures--variable rate program. For a variable rate program, the material disclosures would also include the required information on the circumstances under which a rate may increase, the limitations on the increase, and the effect of an increase.
12. 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:
Three years after the transaction giving rise to the right of rescission.
Transfer of all of 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 legal title through a purchase money note and mortgage.
A partial transfer of the consumer's interest, such as an intra-family transfer bestowing co-ownership on a spouse, does not terminate the rescission right. Transfer of all the consumer's interest includes such transfers as bequests and gifts. Neither a sale of the property nor a transfer need be voluntary. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in § 125 of the act, the three-year termination limit may be extended by an administrative proceeding to enforce the provisions of this section.
13. Joint owners. If more than one consumer has the right to rescind a transaction, any one of them may exercise the right and cancel the transaction on behalf of all. For example, if a husband and wife have the right to rescind a transaction, either spouse acting alone may exercise the right and both spouses 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 whom are entitled to rescind, both must receive the notices and disclosures. For example, if both spouses are entitled to rescind a transaction, each

must receive two copies of the rescission notice and one copy of the disclosures. If an agent is acting for the consumer, the creditor need only deliver the material to the agent, so long as state agency law precludes the consumer from acting on his or her own behalf in such circumstances. If state law does not prevent consumers/principals from acting on their own behalf, then the creditor must deliver the material to both the consumer and the agent.
2. Format. The information required by the rescission notice may be on a notice that is physically separated from the material disclosures or combined with the material disclosures, as long as the information is set forth in a clear and conspicuous manner. The notices in Appendix G provide models that creditors may use in giving notice, but their use is not required. Creditors may substitute other forms.
3. Content. The notice must include all of the information outlined in paragraphs (b)(1) through (b)(5). The requirement in paragraph (b)(5) that the transaction be identified may be met by providing the date of the transaction. 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 to 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 paragraph (b) need not be given before the event giving rise to the right of rescission. The creditor may deliver the notice after the event occurs, 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 three-business-day rescission period will run from May 15. The creditor must also delay performance for a reasonable time after that period.
15(c) Delay of creditor's performance.
1. General. During the three-day rescission period and for a reasonable time thereafter, the creditor may not, either directly or through a third party:
Disburse advances to the consumer.
Begin performing services for the consumer.
Deliver materials to the consumer.
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. Permissible actions. Nothing in the provision prevents a creditor from taking other steps during the delay, short of beginning actual performance. These actions may include:
Preparation of the cash advance check.
Perfection of the security interest.
Accruing 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 service, 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. A third party might provide materials, for example, when the consumer makes a credit card purchase below a merchant's floor limit and the

card issuer in not contacted for authorization.

5. Delay beyond rescission period. The creditor must wait until it is "reasonably satisfied" that the consumer has not rescinded. The creditor may reasonably assure itself by:

Waiting a reasonable number of days after expiration of the recission period to allow for delivery of a mailed notice.

Obtaining a written statement from the consumer that the right has not been exercised.

If more than one consumer has the right to rescind, the creditor cannot reasonably rely on the assurance of one consumer only, since other consumers may exercise the right.

15(d) Effects of rescission.

1. Termination of security interest. Any security interest giving rise to the right of rescission becomes void when the consumer exercises that right. The rule operates automatically to negate the security interest, regardles of its status and whether or not it was recorded or perfected. Under paragraph (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. Only that portion of the creditor's security interest related to the rescindable transaction becomes void. For example, upon rescission:

If the consumer's right to rescind was activated by the opening of a plan, any security interest in the dwelling provided for in the plan is void.

If the right arises due to an increase in the credit limit, the interest is void as to purchase and advances under the increase, but the security interest up to the original 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.

3. 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 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. The fact that these amounts may not represent profit to the creditor is irrelevant. For example:

If the transaction is the opening of the plan, the creditor must return any membership or application fee paid.

If the transaction 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 transaction 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.

4. Amounts not refundable to a consumer. A creditor need not return 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 money or property given by the creditor to the consumer; those amounts must be tendered by the consumer to the creditor under paragraph (d)(3).

5. Reflection of security interest termination. The creditor must take whatever steps are necessary to show the

termination of the security interest. Such steps include the cancellation of documents creating the interest, and the filing of release or termination statements in the public records. In a transaction involving subcontractors or suppliers that also hold interests related to the credit transaction, the creditor must insure that the termination of their 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.
6. Property exchange. Once the creditor has fulfilled its obligation under paragraph (d)(2), the consumer must tender to the creditor any money or property the creditor has already delivered to the consumer. At the consumer's option, property may be tendered at the location of the property but money must be tendered at the creditor's place of business.
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 three-party open-end 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 three-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.
7. Reasonable value. Rather than returning the property itself, the consumer may offer the creditor its reasonable value, if returning the property would be extremely burdensome to the consumer. For example, if building materials have already been incorporated into the consumer's dwelling, the consumer may pay their reasonable value instead.
8. Modifications. The procedures outlined in paragraph (d)(2) and (d)(3) may be modified by a court. This could apply, for example, to a situation where a consumer is in bankruptcy proceedings and may be prohibited from returning anything to the creditor, or any situation where the equities dictate that a modification should be made.
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 three-day period. While the consumer must initially determine whether a personal financial emergency exists, the "bona fide" test requires creditors to assure themselves that the reasons given for the waiver or modification are substantial and credible. The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the rescission right.
2. Procedure. To waive or modify the right to rescind, the consumer must give a written statement that both specifically waives or modifies the right and includes a brief description of the emergency. Each consumer entitled to rescind must sign the waiver statement. Therefore, 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. However, depending on state agency law, a waiver or modification may be executed by a duly appointed agent acting under a valid power of attorney.
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. In such a case, only that particular advance would be exempt from the rescission right that is provided in this paragraph.
2. Bridge loans. A bridge loan to purchase another dwelling but secured by the consumer's equity in the consumer's current principal dwelling is rescindable. For example, a homeowner may seek to purchase a new home prior to the sale of the current residence, and obtain an advance secured by the equity in the current residence. In such a case, although the funds are used to acquire a dwelling, the proceeds of that loan are not secured by that dwelling but by the consumer's equity in the present residence.
3. State creditors. Cities and other political subdivisions of states acting as creditors are not exempted from this section.
4. 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," subsequent credit extensions are subject to the right of rescission. Such extensions are rescindable unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent transactions.

References

Statute: §§ 113, 125, and 130.
Previous regulation: § 226.9.
Other sections: §§ 226.2, 226.23, 226.25, and Appendix G.
1981 changes: This section reflects the statutory amendments of 1980. It provides for a limited right of rescission for a three-year trial period when individual credit extensions are made in accordance with a previously established credit limit for an open-end credit plan. The rescission right arises only when a security interest is taken in property used as the consumer's principal dwelling at the time the security interest is retained, rather than also including property expected to be used as a consumer's principal dwelling in the future. The rescission right applies to the consumer's principal dwelling even if the dwelling is not characterized as real property under relevant state law. It does not apply to any "residential mortgage transaction," regardless of the lien status of the security interest taken.
Under the property exchange provisions, the regulation extends from 10 to 20 days the time in which the creditor must return a consumer's money or property and take necessary action to terminate the security interest. It also extends from 10 to 20 days the time the creditor has to take possession of money or property tendered by the consumer. The regulation also reflects the amended statute in providing that a court may modify exchange procedures outlined in the regulation.
Section 226.16--Advertising.
1. Coverage. An advertisement includes

any commercial message in any communication medium that promotes, directly or indirectly, any consumer credit transaction. Responsibility for complying with the advertising rules is not limited to creditors but includes any advertiser. Thus, brokers, merchants and others who are not themselves extenders of credit are bound by these rules when they advertise credit terms.

2. Media. These rules apply to advertisement of credit terms using any media including radio and television advertisements. A promotional letter sent to prospective customers may qualify as an advertisement; however, educational material containing hypothetical transactions that could not reasonably be construed as an offer of credit is not an advertisement. The media through which advertisements are disseminated are not liable for violations of these provisions.

. 3. Clear and conspicuous standard. This section is subject to the general "clear and conspicuous" 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 advertisement.

16(a) Actually available terms.

1. General rule. To the extent 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. Thus a creditor may advertise terms that will be offered for only a limited time, or terms that will become available at a future date.

2. Specific credit terms. The specific terms to which this rule applies are not limited to those that must be disclosed under §§ 226.6 or 226.7, but would include specific components of a credit plan such as the minimum amount of periodic payments, or points in a plan secured by real estate. This disclosure in an advertisement of a minimum periodic payment is not a triggering term.

16(b) Advertisement of terms that require additional disclosures.

1. Must state 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 required additional disclosures.

2. Term may be implicit. This provision applies even if the triggering term is not stated explicitly, but may be readily determined from the advertisement. For example, a statement that "the equity in your home becomes spendable with an XYZ line of credit" implicitly states that the creditor will take a security interest in the consumer's home.

3. Membership fees. The requirement that any membership fee be disclosed under this section does not extend to those situations where such a fee is required for participation in the plan whether or not an open-end credit feature is attached. See § 226.6(b) of this commentary for further discussion of this point.

16(c) Catalogs and mulitple-page advertisements.

1. General rule. The mulitple-page advertisements to which this section refers are advertisements consisting of a series of sequentially numbered pages, for example, a supplement to a

newspaper. Thus, 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 this paragraph.

2. Cross-referencing credit terms. These forms of commercial messages will be considered single advertisements (requiring a single set of credit cost disclosures) if the advertisement contains a table, chart, or schedule clearly stating sufficient information for the consumer to determine the disclosures required under § 226.6. In addition to the table, chart or schedule, any mention of a triggering term elsewhere in the catalog or multiple-page advertisement must clearly refer to the specific page where the table, chart, or schedule begins. This rule permits creditors to put credit information together in one place in a catalog or multiple-page advertisement, so long as the information reflects the range of credit transactions actually offered. The rule applies only if the catalog or multiple-page advertisement contains one or more of the disclosures set forth in § 226.6. A list of different annual percentage rates applicable to different balances, for example, would not trigger further disclosures under paragraph (b) and so would not be covered by paragraph (c).

2. Representative examples of typical extensions of credit. A table or schedule must reflect amounts of credit actually offered, up to and including the higher-priced items. This does not mean the chart must make disclosures for the single most expensive item the advertiser offers, but only that the chart cannot be limited to information about less expensive sales when the advertiser 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.

References

Statute: §§ 141, 143.

Previous regulation: § 226.10 (a), (b), and (c).

Other sections: §§ 226.2, 226.6.

1981 changes: The section substantially restates the prior regulation, but reflects the statutory changes to § 143 of the act which reduce both the 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 trigger term is used. The substance of Board 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.

1. Clear and conspicuous. This standard requires that disclosures be in a reasonably understandable and usable form. For example, while the regulation requires no particular 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.
May be set off from other information on the contract document by outlining them in a box.
May be separated from the contract provisions with bold print dividing lines, a different color background, or a different style of type.
3. Location. The segregated disclosures may appear on a separate disclosure statement or on the front or back of another document, such as the contract or note. They need not appear entirely on one page, and may begin on one page and continue on the next.
4. Directly related. The segregated disclosures may not be accompanied by any information that is not "directly related" to those disclosures. This means that they may not include any information beyond that called for by §226.18, even if the information elaborates on a required disclosure, such as:
A description of the type of security interest taken in the transaction.
An explanation of the type of rebate method applied in the event of prepayment.
Specific conditions for imposition of a prepayment penalty.
5. Permissible additions. Footnote 37 permits the following items to appear with the segregated disclosures, even though not "directly related" to those disclosures:
An acknowledgment of receipt.
The date of the transaction.
The consumer's name, address and account number.
6. Segregation exceptions. The itemization of the amount financed under § 226.18(c) must appear separate from the segregated disclosures. It may appear on a separate document or on the same document as the segregated disclosures, so long as it is not included in the area reserved for those disclosures. The following disclosures may appear with the other disclosures or elsewhere, at the creditor's option:
The creditor's identity.
The variable rate example.
Credit life or property insurance premiums.
Certain security interest charges.
7. More conspicuous. The terms "finance charge" and "annual percentage rate" must be shown more conspicuously only in relation to the other disclosures required by § 226.18. For example, where the disclosures are included on the contract document, those two terms need not be more conspicuous as compared to the heading on the contract document or information required by state law. In addition, those terms need not be made more conspicuous except as part of the finance charge and annual percentage rate disclosures under §§ 226.18(d) and (e). The term need not be highlighted when used as part of other required disclosures, such as a prepayment penalty under § 226.18(k) or a required deposit under § 226.18(r). The terms may be made more conspicuous in any way that highlights them in relation to the other required disclosures. For example, they may be:
Underlined.
Printed in a contrasting color.
Printed in larger type.
Set off with asterisks.
Printed in capital letters when other disclosures are printed in capital and lower case.

8. Creditor's identity. An exception to the "more conspicuous" rule is made for disclosure of the creditor's identity. Even though it is a required disclosure, the creditor's name may be more prominently displayed than the finance charge and annual percentage rate, so long as those two terms are more conspicuous than the remaining disclosures.

17(b) Time of disclosures.

1. Consummation. As a general rule, disclosures must be made before "consummation" of the transaction, the time at which the consumer becomes contractually liable on the credit obligation, as determined by applicable law. The payment of a nonrefundable fee prior to that time does not constitute consummation unless this legally obligates the consumer on the credit transaction. The disclosures need not be given by any particular time before consummation, except in certain mortgage transactions under § 226.19.

17(c) Basis of disclosures and use of estimates.

1. Legal obligation. The creditor must base its disclosures on the terms of the legal obligation between the parties. Normally, that obligation is reflected in a single note or contract. In some cases, however, an agreement between the creditor and a third party or between the consumer and a third party appears to affect the terms of the obligation. For example, a consumer and a creditor agree to a mortgage loan with an interest rate of 15%, which is reflected in the note between the parties. In a separate agreement with the consumer, the seller of the property agrees to subsidize the consumer's payments for the first two years, giving the consumer an effective rate of 12% for that period. The note between the creditor and consumer does not refer to or reflect the seller agreement in any way and the consumer is legally bound to the 15% rate for the entire term. In this case, the subsidy is not part of the legal obligation between the consumer and the creditor; the disclosures must reflect the 15% rate only.

2. Obligation reflected in multiple documents. While the legal obligation is normally embodied in a single note or contract, in rare circumstances the parties may have agreed to two separate obligations that between them reflect a single legal obligation. For example, in a mortgage transaction, the lender and consumer agree to a note specifying a 14% interest rate. However, in a separate document signed by both parties, the consumer agrees to pay four points to the lender at consummation, in return for a reduction in the interest rate to 12% for a portion of the mortgage term. If the "buy-down" agreement forms part of a single legal obligation, overriding any conflicting provisions in the note, it must be reflected in the disclosures given for the mortgage.

3. Modification of obligation. 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, disclosures should reflect the schedule of monthly payments specified in the written contract, even though payments are actually made on a voluntary payroll deduction plan or an informal principal reduction agreement. Similarly, a creditor whose written contract calls for regular monthly payments may not reflect in its disclosures that it customarily permits consumers to defer payments from time to time, such as

over holiday seasons or to reflect seasonal employment.

4. Basis for estimates. Disclosures may be estimated if the exact information is unknown at the time disclosures are made. The estimates must be made on the basis of the best information reasonably available 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 calculation. The creditor normally may rely on the consumer's representations as to the time of consummation and the amount to be financed, subject to factors in the creditor's control. 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.

5. Labelling estimates. Estimates must be designated as such in the segregated disclosures. Generally, only the particular disclosure for which the exact information is unknown is labelled as an estimate. However, where 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 finance charge is labelled as an estimate. The creditor may also label as estimates the total of payments and the payment schedule. No further explanation of the basis for the estimates may be included with the segregated disclosures, although an explanation may appear as additional information apart from the disclosures.

6. Minor variations. Paragraph (c)(3) allows creditors to disregard certain factors in making disclosures. These factors produce very slight variations in disclosed terms and taking account of those variations may create substantial computation difficulties.

Creditors may ignore the effects of collecting payments in whole cents. Since 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 must often be adjusted slightly to account for the rounding of the other payments to whole cents.

Creditors may ignore the fact that payments scheduled for a day they are not open must be made on a different day.

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.

Creditors may ignore the fact that leap years contain an extra day.

7. 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 on account 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 paragraph (c)(4); the creditor could not use the minor irregularity rule and would have to take account of the long odd days in the first period in calculating its disclosures.

8. Measuring odd periods. In determining whether a transaction may take advantage of the rule in paragraph (c)(4), the creditor must measure the variation against a regular period, which is the most common payment interval in the transaction. In measuring the length of that period, the creditor looks to the next regular period following the irregularity and, as a general rule, measures it based on the actual number of days. In transactions involving payment intervals of a month, semimonth, or multiple of a month, however, the creditor may use either the actual number of days or an assumed 30-day month in measuring the regular and irregular periods.

9. Demand disclosures. Disclosures for demand obligations are to be based on an assumed one-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, where 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 disclosures must reflect that date.

10. Future event as maturity date. An obligation whose maturity date is determined by a future event is not a demand obligation. For example, a loan may be payable on the sale of property. Since 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.

11. Demand transactions. Most demand transactions contain a demand feature which may be exercised at any point during the term, but certain transactions convert to a demand feature 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 seven years. These mortgages are generally written as long-term obligations, but contain a demand feature which may only be exercised within a thrity-day period at seven years. The disclosures for these transactions should be based upon the legally agreed-upon maturity date. Thus, if a mortgage containing the seven-year FNMA call option is written as a twenty-year obligation, the disclosures should be based on the twenty-year term.

12. Balloon mortgages. Balloon payment mortgages, in which payments are based on a long-term amortization schedule but with a final payment due after a shorter term, are not demand obligations because no demand feature is provided in the contract. For example, a mortgage with a term of five years and a payment schedule based on twenty years would not be treated as a mortgage with a demand feature, in the absence of any contractual demand provisions.

13. Number of transactions. Paragraph

(c)(6) provides flexibility for handling transactions that have, or may have, multiple stages. For example:

When a creditor finances the credit sale of a radio and a television on the same day, the creditor may disclose the transactions as either one or two 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 two transactions (a credit sale and a separate loan for the downpayment).

14. Series of advances. Paragraph (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 transactions are treated as one transaction and the timing and amounts of advances are unknown, creditors must make disclosures based on estimates, as provided in paragraph (c)(2).

15. Construction loans. Paragraph (c)(6)(ii) provides a flexible rule for disclosure of construction loans that may be permanently financed. These transactions have two distinct phases, similar to two 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 and the consumer generally pays 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 mortgate transaction. Paragraph (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 two phases. This rule is available whether the consumer is initially obligated to accept construction financing only or is obligated to both construction and permanent financing from the outset. If the consumer is obligated on both phases and the creditor chooses to give two sets of disclosures, both sets must be given to the consumer initially, because both transactions would be consummated at that time.

16. Multipe-advance construction loans. Paragraph (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 one or more than one transaction and also disclose the permanent financing as a separate transaction.

17. Wrap-around financing. "Wrap-around" loans involve a creditor's "wrapping" the outstanding balance on an existing loan and advancing additional funds to a borrower. The borrower makes a single payment to the new creditor, who makes the payments on the pre-existing loan to the original creditor. Wrap-around loans are considered new transactions, with the disclosures made as they would be for a refinancing.

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 complete set of disclosures. Regardless of the arrangement made between creditors, each creditor in the transaction is legally responsible for seeing that the disclosures are provided and any one of them may be subject to liabiity for violations. When one of the creditors is a seller, the creditor making the disclosures must make credit sale disclosures, even though the disclosing creditor is not the seller. For example, when an automobile dealer and a bank financing the sale of a car both meet the creditor definition, the total sale price under § 226.18(j) must be disclosed, even though the creditors have agreed that the non-seller bank will make the disclosures.

2. Multiple consumers. If a credit transaction involves more than one consumer, the disclosures may be given to any consumer who is primarily liable on the obligation. Thus, when two consumers are joint obligors 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. Whether delivery of disclosures to a consumer's attorney or other representative is suffient is a matter of applicable agency law.

17(e) Effect of subsequent events.

1. Subsequent events.s A disclosure that is made inaccurate because of an event occurring after the transaction is consummated is not in itself a violation of the regulation. But the creditor may be required to give the consumer updated disclosures, as outlined in §§ 226.17(f), 226.19 and 226.20.

17(f) Early disclosures.

1. Change in rate. No redisclosure is required for changes that occur between the time disclosures are made and consummation, unless the annual percentage rate in the consummated transaction exceeds the limits prescribed in the regulation (1/8 of 1 percentage point in regular transactions and 1/4 of 1 percentage point in irregular transactions). To illustrate:

If disclosures are delivered in a regular transaction on July 1, the transaction is consummated on July 15, and the actual APR varies by more than 1/8 of 1 percentage point from the disclosed APR, then the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. This is true even if the disclosures made on July 1 are based on estimates and marked as such.

2. Variable rate. The addition of a variable rate feature to the credit terms, after early disclosures are given, requires new disclosures.

3. Special rules. In certain residential mortgage transactions, 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. Where subsequent events occur after consummation, new disclosures are required only if there is a refinancing or an assumption within the meaning of § 226.20.

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 disclosure 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 transactions meet the requirements of paragraph (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 conditions in paragraphs (h)(1) and (h)(2) are met. If those conditions are not met, the general timing rules in § 226.17(b) apply.
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. Creditors in interim student credit extensions need not disclose certain items at the time the credit is actually extended, but must make complete disclosures (except for total sale price) 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. 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, where the consumer has no contingent liability for payment of those amounts. A loan guarantee fee that is paid separately by the student at the outset or withheld from the proceeds of the loan is a prepaid finance charge. That sum is deducted from the loan proceeds to determine the amount financed and included in the calculation of the finance charge.
3. Loan vs. credit sale. The credit extended in these transactions may be in the form of a loan or a sale of goods or services. When the student receives the funds directly and may use them as the student sees fit for expenses related to attendance at the institution, loan disclosures are appropriate. Where the funds are credited to the student's account with the institution extending the credit and the student receives goods and services from that institution, the transaction is a credit sale.
4. Consolidation. Consolidation of the interim loans through a renewal note with a set repayment schedule is a refinancing within the meaning of § 226.20. Any unearned portion of the finance charge must be reflected in the

new finance charge and is not added to the new amount financed.

References

Statute: §§121, 122, 124, and 128.
Other sections: §§ 226.2 and Appendix H.
Previous regulation: §§ 226.6 and 226.8.
1981 changes: With a 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 six months to one year. Also, any alternate maturity date must be stated in the legal obligation rather than inferred from the documents. 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 a single transaction or as several transactions. Appendix D is applicable only to multiple advanced for the construction of a dwelling, whereas its predecessor, Board Interpretation § 226.813, could be used for all multiple advance transactions. In the case of disclosures 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.
Section 226.18--Content of disclosures.
General.
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 any disclosure of the total sale price.
In a credit sale requiring disclosure of the total sale price under paragraph (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:
If in a particular transaction 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. Appendix H. The format to be used in making these disclosures, as well as acceptable modifications, is discussed in the commentary to Appendix H.
18(a) Creditor.
1. Creditor identity. The creditor making the disclosures must be indentified. Use of the creditor's name is sufficient, but the creditor may at its option include an address or telephone number. As noted in the commentary to § 226.17(d), in transactions where there are multiple creditors, any one of them may make the disclosures; the one doing so must be identified.
18(b) Amount financed.
1. Amount financed. 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. The discriptive explanation may be further revised to reflect a variable rate feature.
2. Add-on or discount charges. Under paragraph (b), 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 would be included in the paragraph (b)(1) amount and deducted under paragraph (b)(3). However, if the principal loan amount includes finance charges that do not meet the definition of a prepaid finance charge (such as add-on or discount interest added to the face amount of the obligation), the amount referred to in paragaph (b)(1) must exclude those finance charges. The following examples illustrate the application of paragraph (b) to these types of transactions. Each example assumes a loan request of $1000 for one year, subject to a 6% precomputed interest rate, with a $10 loan fee collected 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 paragraph (b)(1) is $1000; no amounts are added under paragraph (b)(2), and the $10 loan fee (a prepaid finance charge) is deducted under paragraph (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 paragrph (b)(1) is $940, which results in an amount financed of $930, after deduction of the $10 prepaid finance charge under paragraph (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 paragraph (b)(1) is thus $1000 and the amount financed $990, after deducting the $10 prepaid finance charge under paragraph (b)(3).
3. Downpayments. "Downpayment" includes any pick-up payment that meets the § 226.2 definition of downpayment. A creditor has the option of treating a deferred downpayment as part of the downpayment if that deferred payment meets the criteria set forth in the definition. 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 meet the definition and that are treated as such are not part of the amount financed under paragraph (b)(1).
4. Rebates and loan pemiums. In a loan transacton, 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 purchasers of the creditor's goods or services. Amounts such as these need not be reflected in the amount financed but they may, at the creditor's option, be include in the Truth in Lending disclosures. If the creditor chooses to reflect them in the disclosures, rather than disregarding them, they may be treated in any manner. To illustrate, if a consumer decides to apply a seller's rebate to the price of the goods, the creditor may, for example, include the amount in the downpayment disclosed as part of the total sale price, although it need not

reflect the rebate in the disclosures at all.
5. Adding other amounts. Paragraph (b)(2) refers to fees or other charges that are not part of the finance charge, to the extent that the consumer decides to finance them rather than pay them separately at consummation of the transaction. Typical examples are real estate settlement charges and premiums for voluntary credit life and disability insurance excluded from the finance charge under § 226.4. Paragraph (b)(2) does not include any amounts already accounted for under paragraph (b)(1), such as taxes, tag and title fees, or the cost or accessories or service policies that the creditor includes in the cash price.
6. Prepaid finance charges. Paragraph (b)(3) requires the deduction of any prepaid finance charge from the amount financed. This computational step should not duplicate any subtraction accounted for under paragraph (b)(1).
18(c) Itemization of amount financed.
1. Creditor option. A written itemization of the amount financed must be provided at the consumer's request. Creditors may provide a written itemization of the amount financed as a matter of course, without awaiting a request from the consumer. If the creditor chooses not to provide an itemization as a matter of course, the disclosures must include a statement of the consumer's right to receive the itemization.
2. Categories. The categories described in paragraph (c) provide general guidance for the information required by that paragraph.
Each category may be further itemized. Categories need not be labelled using the specific language in paragraph (c). Categories are not mutually exclusive. At the creditor's option, an amount may be shown more than once in the itemization, so long as properly identified. For example, a credit report fee may be both a prepaid finance charge under paragraph (c)(1)(iv) and an amount paid to a third person under paragraph (c)(1)(iii).
3. Amounts paid to consumer. Paragraph (c)(1)(i) encompasses funds given to the consumer in the form of cash or a check, 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 paragraph (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 labelled in the itemization of the amount financed.
4. Amounts credited to consumer's account. Paragraph (c)(1)(ii) includes amounts such as a credit sale balance with the creditor or an unpaid balance on a prior loan with that creditor. The term "consumer's account" refers only to a debt account and not to an asset account.
5. Amounts paid to others. Paragraph (c)(1)(iii) includes, for example, tag and title fees; amounts paid to insurance companies for credit life and disability insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. Third parties must be identified by name, except as footnote 40 provides. Under that footnote, public officials or government agencies, credit reporting agencies, appraisers and insurance companies may be generically identified with phrases such as "credit bureau" or "state agency."
6. Prepaid finance charge. Paragraph

(c)(1)(iv) requires disclosure of prepaid finance charges, as defined in § 226.2. 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 a paragraph (c)(1)(iii) amount. The creditor may also further describe the two components of the prepaid finance charge, although no itemization of this element is required by paragraph (c)(1)(iv).

7. Additional information. This paragraph establishes only a minimum standard for the itemization of the amount financed. The creditor may include information in the itemization reflecting payments that are not part of the amount financed. For example, certain insurance premiums that are paid by the consumer to the creditor may not be financed. At the creditor's option, more information may be included in the itemization, such as additional categories or a mathematical progression that depicts the arithmetic relationship of the terms. Appendix H contains a model form for the itemization of the amount financed.

8. RESPA transactions. The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide good faith estimates of closing costs similar to the amount financed itemization. Transactions subject to RESPA are exempt from the requirements of paragraph (c), so long as the creditor complies with the good faith estimates requirement of RESPA.

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 paragraph (d). The creditor may further modify the descriptor for variable rate transactions. The finance charge may be shown on the disclosures only as a total amount; the elements of the finance charge may not be itemized in the segregated disclosures.

2. Tolerance. A tolerance for the finance charge is provided in footnote 41. The disclosed finance charge will be considered accurate if it is not more than $5 above or below the exact finance charge in a transaction involving an amount financed of $1,000 or less, or not more than $10 above or below the exact finance charge where the amount financed exceeds $1,000.

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 paragraph (e). For variable rate transactions, the descriptor may be further modified. Under § 226.17(b), disclosures of the annual percentage rate and finance charge must be more conspicuous than the other required disclosures.

2. Exception. Footnote 42 calls attention to an exception for certain transactions involving maximum finance charges of $5 or $7.50 and amounts financed up to, or over, $75, respectively. No annual percentage rate disclosure is required for these transactions.

18(f) Variable rate.

1. Coverage. The requirements of this paragraph apply to all transactions in which the credit contract allows the creditor to increase the rate orginally disclosed to the consumer during the term of the loan. The provisions, however, do not apply to increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral.
2. Basis for disclosures. For transactions subject to the requirements of this paragraph the disclosures must be given for the full term of the transaction and must be based on the rate in effect at the time of consummation.
3. Circumstances, limitations, effects. The "circumstances," referred to in paragraph (f)(1), under which the rate may increase would include identification of any index to which the rate is tied, as well as any conditions or events on which the increase is contingent. The "limitations" called for by paragraph (f)(2) refer to any maximum imposed on the amount of an increase at any time, as well as any maximum on the total increase over the life of the transaction. They do not include legal limits in the nature of usury or rate ceilings under state of federal statutes or regulations. Disclosure of the effect of an increase under paragraph (f)(3) refers to an increase in the number or amounts of payments or an increase in the final payment.
4. Hypothetical example. The hypothetical increase required in paragraph (f)(4) must be given in all variable rate transactions. At the creditor's option, the disclosed hypothetical may be either general or transaction-specific--that is, the creditor may provide a standard example that represents the general type of credit offered by the creditor or an example that directly reflects the terms and conditions of the particular transaction. The model forms in Appendix H provide examples of the disclosures required by this paragraph.
5. Other variable rate regulations. Transactions in which the creditor is required to comply with and has complied with variable rate regulations of other federal agencies are exempt from the requirements of this paragraph. Those regulations include the adjustable mortgage loan instrument regulation issued by the Federal Home Loan Bank Board (12 CFR Part 545.6-4(a)) and the adjustable-rate mortgage regulation issued by the Comptroller of the Currency (12 CFR Part 29).
6. Examples of variable rate mortgages. The following mortgage transactions constitute variable rate transactions:
Renegotiable rate mortgage instruments that involve a series of short-term loans secured by a long-term mortgage, where the lender is obligated to renew the short-term loans at the consumer's option. At the time of renewal, the lender has the option of increasing the interest rate. Disclosures must be given for the term of the mortgage with all disclosures calculated on the basis of the rate in effect at the time of consummation of the transaction.
"Shared equity" or "shared appreciation" mortgages that bear a fixed rate of interest and contingent interest based on the consumer's equity in the mortgage property. The contingent interest is payable in a lump sum at a specified time. Disclosures must be based on the fixed interest rate; the shared appreciation feature, including the conditions for its imposition, the time at which it would be collected, and the limitation on the creditor's share, must be described under paragraph (f). (As

discussed in § 226.2, other types of shared-equity arrangements are not considered "credit" and are not subject to Regulation Z.)

Graduated payment mortgages and step-rate mortgages are not considered variable rate transactions.

18(g) Payment schedule.

1. Amounts included in repayment schedule. For purposes of this paragraph, the repayment schedule should reflect all components of the finance charge, not merely the portion attributable to interest. 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 mortgage transactions.

2. Demand obligations. Under paragraph (g)(1), 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. A disclosure of "interest payable quarterly" or "interest due the first of each month" would satisfy the requirements of paragraph (g)(1). Other disclosures required by this paragraph need not be given for those transactions.

3. Abbreviated disclosure. Paragraph (g)(2) permits creditors to disclose an abbreviated payment schedule where 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 where mortgage guarantee insurance premiums, included in the finance charge, create variations in the amount of the scheduled payments. The mortgage insurance premiums, paid either monthly or annually, cause variations in the amount of the payments scheduled, reflecting the annual decrease in the premium due. In the abbreviated payment schedule, the creditor must disclose the dollar amount of the highest and lowest payments and a reference to the variation in payments

4. Combined payment schedule disclosures. Creditors may combine the paragraph (g)(2) option with the general payment schedule requirements in transactions where only a portion of the payment schedule meets the conditions of paragraph (g)(2). For example, in a graduated payment mortgage where payments rise sharply for five years and then decline over the 25 years because of decreasing mortgage insurance premiums, the first five years would be disclosed under the general rule in paragraph (g) and the next 25 years according to the abbreviated schedule in paragraph (g)(2).

5. Effect on other disclosures. Paragraph (g)(2) applies only to the payment schedule disclosure. The actual amounts of payments must be taken into acount in calculating an disclosing the finance charge and the annual percentage rate.

6. Downpayment/pickup payments. As discussed in § 226.2, deferred downpayments or "pick-up payments" that meet the conditions set forth in the difinition of downpayment may be created 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.

18(h) Total of payments.

1. Calculation of total of payments. The total of payments is the sum of the

payments disclosed under paragraph (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.
2. Descriptor. The descriptive phrase required for the total of payments may be revised to reflect a variable rate feature.
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, if the payment schedule is disclosed under paragraph (g)(1), the creditor is not required to disclose the total of payments.
18(i) Demand feature.
1. Disclosure requirements. In demand obligations where the disclosures are based on an assumed maturity of one year under § 226.17(c)(5), that fact must also be stated. 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.
2. Covered demand features. The type of demand feature triggering the disclosures required by paragraph (i) is intended to include only those demand features contemplated by the parties as part of the agreement. For example, this provision does not apply to transactions which convert to a demand status as a result of the consumer's default.
3. Relationship to payment schedule disclosures. As provided in paragraph (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 paragraph (g)(1) is not available.
18(j) Total sale price.
1. Disclosure. 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. The figure to be disclosed is the sum of the cash price, other charges calculated under paragraph (b)(2), and the finance charge disclosed under paragraph (d). The reference to a downpayment may be eliminated in transactions calling for no downpayment.
18(k) Prepayment.
1. Disclosure. The disclosure requirements in paragraph (k) apply to any prepayment, whether voluntary or involuntary, as in the case of prepayments resulting from acceleration. If a penalty or refund is possible for any type of prepayment, even though not for all, a positive disclosure is required. Any difference in rebate or penalty policy, depending on whether prepayment is voluntary or not, may not be disclosed with the segregated disclosures.
2. Penalty. Paragraph (k)(1) includes only those transactions in which the interest calculation takes account of each reduction in principal. In simple interest transactions, the creditor must indicate either that prepayment is subject to a penalty, or that it is not. The term "penalty" as used here encompasses only those charges that are assessed strictly because of the prepayment in full of the

obligation, as an addition to all other amounts. Items which are not penalties include:
Prepaid finance charges assessed at the outset of the transaction, such as points in a mortgage loan.
Use of Rule of 78's method to determine rebate.
However, a minimum finance charge in a simple interest transaction is a penalty.
3. Rebate of finance charge. Paragraph (k)(2) applies to any finance charges that do not involve the application of a rate to a declining balance. It includes not only typical precomputed finance charges such as add-on rates, but also charges that take account of some but not all reductions in principal. For example, certain mortgage insurance premiums are assessed on the basis of an annual outstanding balance, although payments are made and principal reduced monthly. Thus, they are calculated on the basis of a declining annual principal balance, but they do not take into account each monthly reduction in principal. As in paragraph (k)(1), the creditor must indicate either that the consumer may or may not receive a rebate of finance charge upon prepayment. 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, although such information may be povided elsewhere in the contract.
4. Rebate-penalty disclosure. Some transactions involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance. In these cases, disclosures about both prepayment rebates and penalties are required. Examples of this type of transaction are simple interest student loans with loan guarantee insurance, and mortgages with mortgage guarantee insurance. if the insurance premiums are not computed strictly by application of a rate to a declining balance, disclosures under paragraph (k)(2) are required with regard to that portion of the obligation, while a prepayment penalty must be disclosed for the simple interest porttion under paragraph (k)(1)
18(1) Late payment.
1. Definition. This paragraph refers only to charges added to individual dilinquent 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 assessed prior to maturity.
Deferal and extension charges.
The continued accrual of simple interest at the contract rate after the payment due date.
2. Alternative disclosure. Many state laws permit the assessing of late charges on the basis of a percentage, not to exceed a certain dollar limit. This alternative approach may be used in complying with paragraph (1). 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.
18(m) Security interest.
1. Purchase money transactions. The property covered by the security interest must be identified. If the collateral is the item purchased as part of, or with the proceeds of, the credit transaction, paragraph (m) requires only a general identification such as "the property purchased in this transaction." Any tranaction in which the credit is being used to purchase the collateral is considered a purchase money transaction

and the more abreviated property identification disclosure required for these types of transactions may be used, whether the obligation is considered a loan or a credit sale.
2. Non-purchase money transactions. In non-purchase 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 "household goods," "motor vehicles, " or "securities." At the creditor's option, however, a more precise identification of the goods may be provided.
3. Mixed collateral. In some transactions in which the credit is used to purchase collateral, the creditor may also take other property of the consumer as security. A combination of the general identification of the property purchased in the transaction, and more specific identification of the other collateral should be provide.
4. After-acquired property. After-acquired property clauses are not security interests and are not to be disclosed under paragraph (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. A specific identification of that collateral is unnecessary but a reminder of the interest arising from the prior indebtedness is required. The disclosure can be accomplished by language such as "collateral securing other loans with us may also secur this loan." At the creditor's option, a more specific description of the property involved may be given.
18(n) Insurance.
1. Location. This disclosure is one of four terms in § 226.18 that may 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. If this information is disclosed with the other segregated disclosures, however, no additional explanatory material may be included.
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. Like the disclosures called for in paragraphs (a), (f), and (n) of this section, this disclosure is one of four which may appear, at the creditor's option, apart from the other required transactional disclosures.
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."
18(q) Assumption policy.
1. Policy statement. Since a creditor's assumption policy may be based on a variety of circumstances not determinable at the time the disclosure is made, the creditor may use phrases such as "subject to conditions" or under certain circumstances" in complying with paragraph (q). The provision requires only that the consumer be told whether or not a subsequent purchaser might be allowed to assume the obligation on its original terms and does not contemplate any explanation of the criteria of conditions for assumability.

2. Original terms. "Original terms" for purposes of paragraph (q) would 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, would represent different terms.

18(r) Required deposit.

1. Definition. This provision requires creditors to inform consumers of the presence of a required deposit and its potential effect on the cost of credit, but eliminates the requirement that the deposit be included in calculation of the annual percentage rate. The footnote to this paragraph sets forth three types of deposits that need not be considered required deposits subject to the disclosure. Use of the phrase "need not" permits creditors to include the disclosure required by paragraph (r) even in cases where there is doubt as to whether the deposit constitutes a "required deposit" within the meaning of the paragraph.

2. Escrow accounts. The first exception is not limited to real estate transactions, nor is it restricted to escrows for taxes and insurance. For example, the escrow account may be for maintenance fees (such as condominium fees) or for repairs, as in the case of completion escrows.

3. Savings accounts. The second exception is for deposits that earn at least 5 per cent per year. Where the consumer receives more than nominal interest on the deposit, that amount need not be viewed as a required deposit. This exception applies whether the deposit is held by the creditor itself or by a third party.

4. Morris Plan transactions. The third exception is for Morris Plan transactions. This is a deposit balance that will be wholly applied toward satisfaction of the consumer's obligation in the transaction.

5. Examples. The following situations need not be treated as required deposits:

Requirement that a borrower be a customer or a member even if there is a fee or a minimum balance involved.

Deposits that are immediately available to the consumer.

Required property insurance escrow on a mobile home transaction.

Refund of interest when the obligation is paid in full.

Escrow of condominium fees.

Funds deposited with the creditor to be disbursed (for example, for construction) before the loan proceeds are advanced.

Escrow of loan proceeds to be released when the repairs are completed.

This list is not intended to be all-inclusive but rather to give guidance in determining whether a deposit is a required deposit for purposes of this paragraph.

6. Certificate of deposit. "Loophole" accounts, where a portion of the funds necessary for the purchase of a certificate of deposit is advanced to the consumer by the issuing institution, are not required deposits. This assumes that the portion contributed by the consumer is subject to an interest rate of more than 5 percent.

References

Statute: § 128.

Other sections: §§ 226.2; 226.17, and Appendix H.

Previous regulation: §§ 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. The finance charge may not and must not be itemized as part of the required disclosures. The disclosed finance charge is considered accurate if it is within the $5 or $10 tolerance provided according to the size of the transaction.

The variable rate hypothetical is required in all 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 late charges imposed before maturity, excluding deferral and extension charges.

The information required in the security interest disclosure has been decreased. The type of security interest is no longer required and the property description requirement has been reduced.

Two disclosure requirements have been added. The disclosures must refer to the contract documents for additional information not contained in the body of the disclosure. The creditor must provide a general statement of its assumption policy in a residential mortgage transaction.

The disclosure of the required deposit is limited to a statement that the annual percentage rate does not reflect the required deposit. The required deposit no longer is used in the computation of the annual percentage rate.

Section 226.19--Certain residential mortgage transaction.

19(a) 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 and a "federally related mortgage loan" under RESPA.

2. Timing and use of estimates. Truth in Lending disclosures must be given within three business days after the creditor's receipt of a consumer's written application or by consummation, 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 a 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 all of the disclosures are estimates, the creditor may include a statement to that effect, instead of separately labelling each estimate. The creditor may provide on a separate document or on the same document (but separate from the required disclosures) explanatory material concerning the estimates and the contingencies that may affect the actual terms.

3. Written application. Creditors should look to RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a "written application" has been received. Depending on HUD interpretations, committing any information to writing may be enough to constitute a "written application"--for example, writing down

information received by telephone from or about an applicant. But, subject to HUD interpretations, a mere telephone or other oral inquiries is not an application if the creditor puts nothing in writing. If a creditor uses written applications, the creditor receives an application when it reaches the creditor in any of the ways applications are normally transmitted--by mail, hand-delivery, or through an intermediary agent of broker.
4. Exceptions. If the creditor knows within the three-day period that no credit transaction will occur, the creditor need not make the disclosures under this section. For example, if a consumer applies for a type or amount of credit which the creditor does not offer, or if the consumer's application cannot be approved, no purpose would be served by credit cost disclosures. If, however, the creditor fails to provide early disclosures and the transaction is later consummated, the creditor will be in violation of this provision.
5. Itemization of amount financed. In many residential mortgage transactions, the itemization of the amount financed required by § 226.18(c) will contain items that also must be disclosed as part of the good faith estimates of settlement costs required under RESPA. Typical settlement costs, such as origination fees or points, would be disclosed under both RESPA and this regulation. In order to eliminate these duplicative disclosures, creditors furnishing the RESPA good faith estimates need not give consumers an itemization of the amount financed, either with the disclosures provided three days after application or with the disclosures given at consummation or settlement.
19(b) Redisclosure required.
1. Conditions for redisclosure. Creditors must make new disclosures if the annual percentage rate at consummation changes from that originally disclosed by more than 1/8 of one percentage point in regular transactions or 1/4 of one percentage point in irregular transactions, as defined in § 226.22. A creditor must also redisclose if a variable rate feature is added to the credit terms after the original disclosures have been made.
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 have changed. If the creditor chooses to disclose only the changed terms, all the terms that have changed must be included in the new disclosures. For example, a change in the annual percentage rate will almost always produce changes in the finance charge, and often in the schedule of payments; these changes would have to be disclosed. If, in addition, changes have occurred in any unrelated terms, such as the amount financed or prepayment penalty, these would also have to be disclosed. However, no new disclosures are required if the only changes involve terms other than the annual percentage rate or the addition of a variable rate feature.
3. Timing. Redisclosures, when necessary, must be given before "consummation or settlement," whichever is later. "Consummation" is defined in § 226.2, and "settlement" is subject to any interpretations issued under RESPA and Regulation X.

References

Statute: § 128(b)(2).
Other sections: §§ 226.2; 226.17 and 226.22.

Other regulatory provisions: Real Estate Settlement Procedures Act (12 U.S.C. 2602) and Regulation X (24 CFR § 3500.2(a) and 3500.5).
Previous regulation: None.
1981 changes: This section is new, to implement the "early disclosure" amendment in § 128(b)(2) of the act.
Section 226.20--Subsequent disclosure requirements.
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 an existing payment obligation. In any form, the new obligation must completely replace the prior one. Thus, 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. Under the same test, however, 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 this paragraph only if it meets the general definition of a refinancing. Paragraph (a)(1) through (5) lists five events which are not to be considered refinancings, even though they may otherwise meet the general definition.
3. Renewal. In determining whether the original terms apply to a renewal under paragraph (a)(1), the creditor may disregard the addition of accured unpaid interest to the principal balance and changes in the term of renewal resulting from the factors listed in § 226.17(c)(3), such as the occurrence of leap year or the varying number of days in months. This exception is available only if Truth in Lending disclosures were made on the earlier transaction.
4. Annual percentage rate reduction. Paragraph (a)(2) exempts a reduction in the annual percentage rate with a corresponding change in the payment schedule. If the rate is subsequently increased, even though it remains below its original level, new disclosures must then be made, if the increase is effected in a way that meets the general refinancing definition.
5. Court agreements. The exception under paragraph (a)(3) includes, for example, agreements approved by a court and reaffirmations of debts discharged in bankruptcy.
6. Workout agreements. Paragraph (a)(4) excepts workout agreements other than those in which the annual percentage rate is increased or additional credit advanced beyond amounts already accrued plus insurance premiums.
7. Insurance renewal. Paragraph (a)(5) exempts the renewal of optional insurance added to an existing credit transaction, assuming that appropriate Truth in Lending disclosures were provided for the initial purchase of the insurance.
8. Variable rate. 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, a renegotiable rate mortgage that was disclosed as a variable rate transaction is not subject to

new disclosure requirements when the variable rate feature is invoked. However, if the variable rate feature was not previously disclosed, a later change in the rate is considered a new transaction subject to new disclosures.

9. 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 charges 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.

20(b) Assumptions.

1. General definition. An assumption as defined in this paragraph 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.

2. Express agreement. "Expressly agrees" means that the creditor's agreement must relate to the specific 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 the subsequent consumer a coupon book.

Acceptance of payments from the new consumer.

3. Retention of original consumer. The retention of the original consumer as an obligor in some capacity doe not prevent the change from constituting an assumption under this provision, 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.

4. Status of parties. Paragraph (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.

5. Assumption fee. The imposition of additional charges does not by itself exclude a transaction from the assumption definition. For example, an assumption fee may be charged and the assumption may remain subject to this paragraph.

6. Disclosures. For transactions that are assumptions within this provision, the creditor must make disclosures based on the "remaining obligation."

The amount financed is the remaining principal balance plus any arrearages of 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, such as an assumption fee or transfer fee, 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.
If a transaction involves add-on or discount finance charges, the creditor may make abbreviated disclosures, as outlined in paragraph (b)(1) through (5).

References

Statute: None.
Other sections: § 226.2.
Previous regulation: § 226.8(j), (k) and (l), Interpretation §§ 226.807, 226.811, 226.814, and 226.817.
1981 changes: Where the previous regulation treated virtually any change of 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 the rule under the previous regulation, but coverage is limited to residential mortgage transactions.
Section 226.21--Treatment of credit balances.
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. It may come about from overpayment by the consumer, from the crediting of rebates of unearned finance charges or insurance premiums, or from other amounts owed to or held for the consumer with respect to that account, such as credits for returned merchandise. With respect to closed-end credit, this could result from the debtor's paying off a loan by transmitting funds in excess of the total balance owed on the account, and the early payoff of a loan entitling the consumer to a rebate of insurance premiums and finance charges.
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 installment payment or the minimum payment due for a given period.
3. Relation to other law. Whether the creditor in fact owes or holds sums for the consumer must be determined under the contract between the parties or by local law. For example, if a creditor has no obligation to rebate any portion of precomputed finance charges on prepayment, the consumer's early payoff may 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 collaterization, or similar provisions. For example, a lender may be entitled by state law to apply an overpayment on one account against a delinquent balance on another account; those rights are not preempted by this provision.
4. Time of refund. If a credit balance remains in the account for more than six months, the creditor must make a good faith effort to return it to the consumer. No request from the consumer is necessary to trigger this duty. "Good faith effort" requires reasonable but not extraordinary effort; the provision contemplates that when the consumer's

current location is not known by the creditor, the minimum tracing requirement will include use of the consumer's last known address and telephone number. Thus, a creditor would be expected to try to reach the consumer by mail and by telephone before considering the consumer untraceable. The creditor may voluntarily refund the credit balance before the six months have run, but if efforts to do so have been unsuccessful, the creditor must still make the required good faith tracing effort after six months.
5. Unclaimed balance. If the consumer cannot be traced, the disposition of the credit balance remaining in the account after six months is a matter of state or other applicable law. The law may require those sums to escheat to the state, or may permit the creditor to retain them, or require some other disposition. Nothing in this provision authorizes the creditor to treat any credit balance (even one less than $1) as income or otherwise appropriate it.

References

Statute: § 165.
Other sections: None.
Previous regulation: None.
1981 changes: This section implements § 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.
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 percentge 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. Tolerances. The annual percentage rate must be disclosed either as an exact figure or as one which varies, in either direction, by no more than the tolerances set forth in paragraph (a)(2) and (3).
5. Regular transactions. Under paragraph (a)(2), an annual percentage rate for a regular transaction is considered accurate if it varies in either direction by not more then 1/8 of 1 percentage point from the actual annual percentage rate. For example, when the exact annual percentage rate is determined to be 10 1/8 %, adisclosed annual percentage rate from 10% to 10 1/4 %, or the decimal equivalent, is deemed to comply with the regulation.
6. Irregular transactions. Paragraph (a)(3) permits a 1/4 of 1 percentage point tolerance for irregular transactions. 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 1/4 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.
7. Relation to § 226.17(c)(4). Under § 226.17(c)(4), creditors may disregard certain irregular first periods and any irregular payments resulting from those periods. Transactions in which the only irregularity is an odds first period are not considered "irregular" for purposes of the 1/4 of 1 percentage point tolerance. If the only irregularities in a payment stream consist of an odd first period and odd payments flowing from that period, of the type described in § 226.17(c)(4), the transaction is considered regular and the annual percentage rate will be measured against the 1/8 of 1 percentage point standard.
8. 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. Only the finance charge imposed on the consumer should be taken into account in computing the annual percentage rate. Thus, interest charges that are refunded for timely payment, or that are paid by the government on interim student loans, are not to be reflected in the rate.
22(b) Computation tools.
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 save 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.
2. 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 1/8 or 1/4 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

transactons, 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.
Example: An add-on rate of 10% converted to an annual percentage rate produces the following actual annual percentage rates at various maturities: at three months, 14.94%; at 21 months, 18.18%; and at 60 months, 17.27%. The creditor may disclose an annual percentage rate of 18.18% (the highest annual percentage rate) for any transaction up to five years, even though that rate is precise only for a transaction of 21 months.
22(d) Certain transaction 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% of that rate, by disclosing for all those balances the annual percentage rate computed on the median balance within that range.
Example: If a finance charge of $9 applies to all balances between $91 and $100, an annual percentage rate of 10% (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%.

References

Statute: § 107.
Other sections: § 226.17(c)(4).
Previous regulation: § 226.5(b) through (e).
1981 changes: The section now provides a larger tolerance (1/4 of 1 percentage point) for irregular transactions. It also eliminates, as of April 1, 1982, the special protection against liability for creditors using faulty calculation tools.
Section 226.23--Right of rescission.
23(a) Consumer's right to rescind.
1. Coverage. This section applies to transactions in which:
A security interest arises from the credit transaction.
The security interest is taken in a consumer's dwelling.
The dwelling is that consumer's principal place of residence.
2. Transactions not covered. If a credit extension is otherwise exempt from Regulation Z, it does not become subject to the regulation because of the nature of 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.
3. Security interest arising from transaction. The security interest must be retained as part of the credit transaction, as in the following examples:
A security interest is acquired by a contractor who is also extending the credit in the transaction.
A mechanic's or materialmen's lien is retained by a subcontractor or supplier of the contractor-creditor, even where the latter has waived its own security interest in the consumer's home.
The security interest is not retained as part of the credit transaction in the following cases:
If a materialmen's or mechanic's lien is obtained by a contractor who is not a party to the credit transaction but merely receivces the proceeds of the consumer's unsecured bank loan.
If all security interests that may arise in connection with the credit transaction are validly waived.
If the creditor obtains a lien and

completion bond that has the effect of automatically satisfying all liens against the consummer's dwelling as a result of the credit transaction.

Although liens arising by operation of law are not considered security interests for disclosure purposes 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 dwelling is not a required disclosure under § 226.18(m), it may still give rise to the right of rescission.

4. Consumer. The right of rescission runs to any consumer whose principal dwelling is subject to the secrity interest. To be a "consumer" within the meaning of § 226.2, that person need not be a signatory to the credit agreement, but must at least have an ownership interest that is encumbered by the creditor's security interest. For example, if one spouse signs a credit contract withoug the participation of the other spouse, the latter is a "consumer" if the ownership interests of both spouses are subject to the security interest.

5. Principal dwelling. A dwelling, as defined in § 226.2, can include 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 residence may be rescindable. The structure must be the consumer's principal dwelling at the time of the credit transaction. Thus, a transaction secured by a second home that is not currently being used as the consumer's principal place of residence is not rescindable, even if the consumer intends to retire there sometime in the future. Similarly, a vacation home used as collateral--if it is not the consumer's principal dwelling--does not give rise to the right of rescission.

6. Consumer's exercise of right. The consumer's exercise of the right of rescission must be in writing but need not be on the form the creditor gives the consumer under paragraph (b). Whether notice of rescission is sent by mail, telegram or other means, the time period for the creditor's performance under paragraph (d)(2) does not begin to run until the notice has been received. The creditor may designate an agent to receive the notice so long as the agent's name and address appear on the notice provided to the consumer under paragraph (b).

7. Rescission period. The period within which the consumer may exercise the right to rescind runs for three business days from the last of the following three events:

Consummation of the transaction.

Delivery of all material disclosures.

Delivery of the required rescission notice.

For example, if a transaction is consummated on June 1 and the disclosures and notice were given on May 31, the rescission period will expire at midnight of the third business day after June 1. If the disclosures were given and the transaction consummated on June 1 and the rescission notice given on June 3, the rescission period will expire at midnight of the third business day after June 3. The consumer must have placed the rescission notice in the mail, filed it for telegraphic transmission, or delivered it to the creditor's place of business within that time in order to exercise the right.

8. Material disclosures. Footnote 48 lists the material disclosures that must be provided before the rescission period can begin in run. Failure to provide information regarding the annual

percentage rate also includes the 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 or administrative sanctions.
9. Unexpired right of rescission. Where 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:
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 legal title through a purchase money note and mortgage.
A partial transfer of the consumer's interest, such as an intra-family transfer bestowing co-ownership on a spouse, does not terminate the rescission right. Transfer of all the consumer's interest includes such transfers as bequests and gifts. Neither a sale of the property nor a transfer need be voluntary. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in § 125 of the Act, the three-year termination limit may be extended by an administrative proceeding to enforce the provisions of this section.
10. Joint owners. Where more than one consumer has the right to rescind a transaction, any one of them may exercise the right and cancel the transaction on behalf of all. For example, if a husband and wife have the right to rescind a transaction, either spouse acting alone may exercise the right and both spouses are bound by the rescission.
11. Addition of a security interest. Under footnote 47, the addition of a security interest to a pre-existing obligation rescindable. The right of rescission applies only to the added security interest, however, and not to the original obligation. In those situations, only the paragraph (b) notice need be delivered, not new materail disclosures; the rescission period will begin to run from the delivery of the notice.
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 notices and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice and one copy of the disclosures. If an agent is acting for the consumer, the creditor need only deliver the material to the agent, so long as state agency law precludes the consumer from acting on his or her own behalf in such circumstances. If state law does not prevent consumer/principals from acting on their own behalf, then the creditor must deliver the material to both the consumer and the agent.
2. Format. The notice must be on a separate piece of paper. No minimum type size or other technical requirements are imposed on the form, but the material must be presented clearly and conspicuously. The notices in Appendix H provide models that creditors may use in giving the notice, but their use is not required. Creditors may substitute other forms.
3. Content. The notice must include all of the information outlined in paragraph

(b)(1) through (5). The requirement in paragraph (b)(5) that the transaction be identified may be met by providing the date of the transaction. 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 paragraph (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 three-business day rescission period will run from May 15. The creditor must also delay performance for a reasonable time after that period.
23(c) Delay of creditor's performance.
1. General rule. During the three-day rescission period and for a reasonable time thereafter, the creditor may 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. Permissible actions. Nothing in paragraph (c) prevents the creditor from taking other steps during the delay, short of beginning actual performance. These steps may include:
Preparation of the loan check.
Perfection of the security interest.
Preparations for discounting or assigning the contract to a third party.
Accruing 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. The creditor may reasonably assure itself by:
Waiting a reasonable period 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 one consumer only, since other consumers may exercise the right.
23(d) Effects of rescission.
1. Termination of security interest. Any security interest giving rise to the right of rescission becomes void when the consumer exercises that right. The rule operates automatically to negate the security interest, regardless of its status and whether or not it was recorded or perfected. Under paragraph (d)(2), however, the creditor must take any action necessary to reflect the fact that the security interest no longer exists.
2. 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 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. The fact that these amounts may not represent profit to the creditor is irrelevant.

3. 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 paragraph (d)(3).

4. Reflection of security interest termination. The creditor must take whatever steps are necessary to show the termination of the security interest. Such steps include the cancellation of documents creating the interest, and the filing of release or termination statements in the public record. In a transaction involving subcontractors or suppliers that also hold interests related to the credit transaction, the creditor must insure that the termination of their 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 completed within that time, but the creditor is responsible for seeing the process through to completion.

5. Property exchange. Once the creditor has fulfilled its obligations under paragraph (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. But money already given to the consumer must be tendered at the creditor's place of business.

6. Reasonable value. Rather than returning the property itself, the consumer may offer the creditor its reasonable value, if returning the property would be extremely budensome to the consumer. For example, if building materials have already been incorporated into the consumer's dwelling, the consumer may pay their reasonable value instead.

7. Modifications. The procedures outlined in paragraph (d) (2) and (3) may be modified by a court. This could apply, for example, to a situation where a consumer is in bankruptcy proceedings and may be prohibited from returning any thing to the creditor or in any situation where the equities dictate that a modification should be made.

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 three-day period. While the consumer must initially determine whether a personal financial emergency exists, the "bona fide" test requires creditors to assure themselves that the reasons given for the waiver or modification are substantial and credible. The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the rescission right.

2. Procedure. To waive or modify the right to rescind, the consumer must give a written statement that both specifically waives or modifies the right and includes a brief description of the emergency. Each consumer entitled to rescind must sign the waiver statement. Therefore, 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. However, depending on state agency law, a waiver or modification may be executed by a duly appointed agent acting under a valid power of attorney.

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. For example, a credit transaction to acquire a mobile home or houseboat to be used as the consumer's home would not be rescindable.

2. Lien status. The lien status of the mortgage is irrelevant for purposes of the exemption in paragraph (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 dwelling and make improvements to that dwelling is exempt if treated as one transacton. If, on the other hand, the loan for the acquisition of the dwelling and the subsequent advances for improvements are treated as more than one transaction, then only the transaction financing the acquisition of the dwelling is exempt.

4. Bridge loans. A bridge loan to purchase another dwelling but secured by the equity in the consumer's current principal dwelling is rescindable. For example, a homeowner may seek to purchase a new home prior to the sale of the current residence, and obtains a loan secured by the equity. In such a case, although the loan is used to acquire a dwelling, the proceeds of that loan are not secured by that dwelling but by the consumer's equity in the present residence.

5. New advances. The exemption in paragraph (f)(2) applies only to refinancings or consolidations by the original creditor. If the transaction involves the advance of new money, then only the amount of the new money is rescindable. For example, if the sum of the outstanding principal balance plus the earned finance charge is $1,000 and the new amount financed is $1,000, then the refinancing would be exempt. On the other hand, if the new amount financed exceeds $1,000, then the amount in excess of that $1,000 would be rescindable. A model rescission notice applicable to transactions involving new money appears in Appendix H.

6. State creditors. Cities and other political subdivisions of states acting as creditors are not exempted from this section.

7. 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.
8. 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. Such loans are rescindable unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent transactions.

References

Statute: §§ 113, 125, 130.
Other sections: § 226.2 and Appendix H.
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.
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. 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 ben omitted. The consumer may waive the right to rescind if necessary to meet a bona fide personal financial emergency.
Section 226.24--Advertising.
General.
1. Coverage. An advertisement includes any commercial message in any communication medium that promotes, directly or indirectly, a consumer credit transaction. Responsibility for complying with the advertising rules is not limited to creditors but includes any advertiser. This wold include, for example, a broker or seller of real estate whose advertisements state credit terms that may be arranged with third-party creditors.
2. Media. These rules apply to advertisement of credit terms using any medium, including radio and television advertisements. A promotional letter sent to prospective customers may qualify as an advertisement; however, educational material containing hypothetical transactions that could not reasonably be construed as an offer of credit is not an advertisement. The media through which advertisements are disseminated are not liable for violations of these provisions.
3. Clear and conspicuous standard. This section is subject to the general "clear and conspicuous" 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 advertisement. 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 to the consumer.
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. Thus, 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) Advertisement 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 the annual percentage rate in § 226.18(e), the advertised annual percentage rate need not include a descriptive explanation of the term. 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 in § 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. Legal obligation. As in § 226.17(c), relating to the basis of transactional disclosures, advertised rates must be based on the legal obligation between the parties.

In some cases, an agreement between the creditor and a third party may affect the terms of the obligation. For example, a builder may agree to buy the consumer's interest rate down from 15% to 12% for the first three years of a 30-year mortgage term. If the "buy-down" agreement between the builder and creditor is not reflected in the note which establishes the legal obligation between the consumer and the creditor, the advertised annual percentage rate and simple interest rate must be determined and disclosed without regard to the interest subsidy provided by the "buy-down" agreement. If, however, the legal obligation between the buyer and the creditor incorporates the "buy-down" agreement between the creditor and the builder, the subsidy may be reflected in the advertised annual percentage rate and the advertisement may indicate that the subsidy produces a 12% simple interest rate for the first three years, provided the advertisement also indicates the simple interest rate applicable to the balance of the 30-year term.

While the legal obligation is normally embodied in a single note or contract, in rare instances, the parties may have agreed to two separate documents that between them reflect a single legal obligation. For example, in a mortgage transaction, the lender and consumer agree to a note specifying a 14% interest rate. However, in a separate document signed by both parties, the consumer agrees to pay four points to the lender at consummation, in return for a reduction in the interest rate to 12% for a portion of the mortgage term. When a creditor's promotional program envisions such a transaction, if the "buy-down" agreement is to form a part of a single legal obligation, overriding any conflicting provisions in the note, it must be reflected in the advertised annual percentage rate. The creditor may advertise the reduced simple interest rate as well, 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.

24(c) Advertisement of terms that trigger additional disclosures.

1. General rule. Under paragraph (c)(1), whenever certain triggering terms appear in credit advertisements, the additional credit terms enumerated in paragraph (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.

2. 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.

3. Payment period. The number of payments required or the total period of repayment includes such statements as:

"48-month payment terms."

"Thirty-year mortgage."

"Repayment in as many as thirty-six 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.

4. Payment amount. The dollar amount of any payment includes statements such as:

"Payable in installments of $103."

"$25 weekly."

"$1,200 balance payable in ten 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.

5. 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, two 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.

6. Disclosure of downpayment. Under paragraph (c)(2)(i), 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.

7. 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), paragraph (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.

8. Annual percentage rate. Under paragraph (c)(2)(iii), as under paragraph (b), the advertisement must also state, if applicable, that the annual percentage rate is subject to increase after consummation.

9. Use of examples. Footnote 49 authorizes the use of illustrative credit transactions to make the necessary disclosures under paragraph (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 paragraph (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 and multiple-page advertisements.

1. General rule. The multiple-page advertisements to which this section refers are advertisements consisting of a paginated series of 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 paragraph (d).

2. Cross-referencing credit terms. These forms of commercial messages wil be considered single advertisements (requiring a single set of credit cost disclosures) if they contain a table, chart, or schedule clearly stating sufficient information for the consumer to determine the disclosures required under paragraph (c)(2). In addition to the table, chart or schedule, any mention of the triggering term elsewhere in the catalog or multiple-page advertisement must clearly refer to the specific page where the table, chart, or schedule begins. This rule permits creditors to put credit information together in one place in a catalog or multiple-page advertisement, so long as that information reflects the range of credit transactions actually offered. The rule applies only if the catalog or multiple-page advertisement contains one or more of the triggering terms from paragraph (c)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under paragraph (c)(2) and

so is not covered by paragraph (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.

References

Statute: §§ 141, 142, 144, and 145.
Other sections: §§ 226.2; 226.4, and 226.22.
Previous regulation: § 226.10(a), (b), (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 § 235 financing has been eliminated, as well as the rule for advertising credit payable in more than four installments with no identified finance charge. Board Interpretation § 226.1002, requiring disclosure of representative amounts of credit in catalogs and multiple-page advertisements, has been incorporated in simplified form in paragraph (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. Creditors must retain evidence that they performed 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 the refunding of credit balances under §§ 226.11 and 226.21.
2. Methods of retaining evidence. Adequate evidence of compliance does not require actual paper copies of disclosure statements or other business records. The evidence may be retained on microfilm, microfiche, or by any other method designed to reproduce records accurately (including computer programs). The creditor need retain only enough information to reconstruct the required disclosures or other records. Thus, for example, creditors need not retain each open-end periodic statement, so long as the information can be retrieved.

References

Statute: § 105.
Previous regulation: § 226.6(i).
1981 changes: The revised regulation substitutes the uniform two-year record-retention rule in place of the previous requirement that certain creditors retain records through at least one compliance examination.
Section 226.26--Use of annual

percentage rate in oral disclosures.
1. Application of rules. The restrictions of this section apply only if the creditor chooses to respond orally to a consumer's request for credit cost information. Nothing in the provision requires creditors to supply rate information orally. If a creditor volunteers information by making oral solicitations (including rate information) that are 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. Creditors may state periodic rates in addition to the required APR, but they need not do so. If the APR is unknown because transaction charges, loan fees, or similar finance charges may be imposed, the creditor should give the corresponding APR (that is, the periodic rate multiplied by the number of periods in a year, as described in § 226.6(a)(2)). The creditor may, but need not, also give the consumer information about other finance charges or other charges.
26(b) Closed-end credit.
1. Information that may be given. Creditors are free to state other annual or periodic rates that are applied to an unpaid balance, along with the required APR. 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 APR in its oral response because of variable in the transaction, it must five the APR for a comparable hypothetical transaction; in this case, other cost information may, but need not, be given. For example, a creditor may be unable to state a precise APR for a mortgage loan without knowing the exact amount to be financed, the amounts of loan fees or mortgage insurance premiums, or similar factros. In this situation, the creditor should state an APR that reflects a standard transaction; it may also provide information, such as the contract interest rate and points, about the consumer's specific case.

References

Statute: § 146.
Previous regulation: Board Interpretation § 226.101.
Other sections: § 226.2 definition of periodic rate.
1981 changes: This section implements amended § 146 of the act, which added a provision dealing with oral disclosures, and also incorporates Board Interpretation § 226.101.
Section 226.27--Spanish language disclosures.
1. Permissible uses. If foreign language disclosures are required by state, federal, or local law, other than in Puerto Rico, they are not inconsistent per se with disclosures under this regulation and may be provided as additional information. If the foreign language disclosures are not required, but a creditor wishes, for example, to give Spanish translations of English disclosures to Spanish-speaking consumers, this also may be given as additional information. In both cases, the English language disclosures must be clear and conspicuous, and the closed-end disclosures in English must be properly segregated in accordance with § 226.17(a)(1).

References

Statute: None.
Previous regulation: § 226.6(a).

Definitions: § 226.2 definitions of creditor, consumer, and advertisement.
1981 changes: No substantive change.
Section 226.28--Effect on state laws.
28(a) Inconsistent disclosure requirements.
1. General. There are three sets of preemption criteria: one applies to the general disclosure and advertising rules of the regulation, and two apply to the credit billing provisions. The regulation also provides for Board determinations of preemption.
2. Rules for chapters 1, 2, and 3. The standard under which state laws that cover the types of requirements in chapters 1 (General provisions), 2 (Credit transactions), and 3 (Crediting advertising) of the act are judged inconsistent, and therefore preempted, is contradiction of the federal law. Examples of laws that would be preempted are:
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 based for what the federal law calls the "annual percentage rate."
3. Laws not contradictory. 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, will 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 requiring itemization of the amount financed would not automatically contradict the permissive itemization under § 226.18(c); but a state law would be inconsistent if it required the itemization to appear with the disclosure of the amount financed in the segregarted closed-end credit disclosures.
4. Creditor's options. Before the Board makes a determination about a specific state law, a 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 approach, as in all cases, the federal disclosures must be clear and conspicuous, and the closed-end disclosures must be properly grouped togethr in accordance with § 226.17(a)(1).
This ability to give state disclosures relieves any uncertainty that a creditor might have prior to Board determinations of inconsistency.
Alternatively, 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 this provision provides a creditor with any immunity for violations of state law if the creditor choose 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 paragraph (a)(2) have two parts. With respect to the rules on correction of billing errors and on regulation of credit reports (§ 226.13 of the regulation), paragraph (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 open-end credit 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, Regulation Z 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 a consumer a longer period, such as 90 days after receipt of the periodic statement, 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 format specified in subparagraph (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 resoluton (subject to the exception discussed above.)

6. Rules for other fair credit billing provisions. The second part of the criteria relate 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(b)(4) and (c) through (f), 226.13, and 226.21. Paragraph (a)(2)(ii) provides that the test of inconsistency is whether the creditor can comply with state law without violating federal law. For example:

If a state law allows a card issuer to offset a consumer's credit card indebtedness against funds held by the card issuer, that state law would be preempted, since § 226.12(d) of this regulation prohibits such action.

A state requirement that periodic statements 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 a card issuer without regard to the $50 and 100-mile limitations of § 226.12(c)(3)(ii) would not be preempted.

In the last two cases, compliance with state law would involve no violation of the federal law.

7. Who may request a chapter 4 determination. Under paragraph (a)(2)(iii), only states (through their authorized officials) may ask for determinations on inconsistency with respect to the fair credit billing provisions.

28(b) Equivalent disclosure requirements.

1. General. A state disclosure may be substituted for the federal only after the Board has made a finding of substantial similarity. Thus, a 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 this rule does not extend to any requirement relating to the finance charge or APR, no state provision on computation, description, or disclosure

of these terms may be substituted for the federal disclosure.

References

Statute: §§ 111, 171(a) and (c).
Previous regulation: § 226.6(b) and (c).
1981 changes: Statutory changes to § 111 of the act are implemented in paragraphs (a)(1) and (b) of this provision. 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 new regulation contains no counterpart to previous § 226.6(c) on placement of inconsistent disclosures.
Section 226.29--State exemptions.
29(a) General rule.
1. Classes eligible. The state determines the clases of transactions for its 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 where 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 must be generally the same as the federal act and Regulation Z. This includes the requirement that state provisions for reimbursement to consumers for overcharges must be at least equivalent to those required in § 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 are 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.
29(b) Civil liability.
1. Not eligible for exemption. The provision that an exemption may not extend to §§ 130 and 131 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: §§ 123, 171(b).
Previous regulation: § 226.12.
1981 changes: The procedures that states must follow to seek exemptions are now located in an appendix. Exemptions under the old regulation will be automatically revoked on April 1, 1982, when compliance with the new regulation is mandatory.

Appendix A--Effect on State Laws

1. Who may make requests. This appendix 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 a creditor, state, or any interested party. However, only states may request

determinations in connection with the fair credit billing provisions of chapter 4.

References

Statute: §§ 111, 171(a).
Previous regulation: §§ 226.6(b), 226.70 (Supplement V, Section II).
1981 changes: The procedures in this appendix were largely adapted from Supplement V of the current regulation (§ 226.70), with changes made to streamline the procedures.

Appendix B--State Exemptions

1. General. This appendix 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: §§ 123, 171(b).
Previous regulation: §§ 226.12, 226.50 (Supplement II), 226.60 (Supplement IV), and 226.70 (Supplement V, Section I).
1981 changes: The procedures set forth in this section represent a combination and streamlining of the procedures set forth in these supplements.

Appendix C--Issuance of Staff Interpretations

1. General. This commentary is mentioned as the primary vehicle for issuing official staff interpretations. In most circumstances, interpretations will not be issued separately from the commentary.

References

Statute: §§ 105, 130(f).
Previous regulation: § 226.1(d).
1981 changes: This provision reflects the Board's intention to use this commentary as the primary vehicle for interpreting the regulation rather than issuance of 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 and timing of advances are 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.

References

Statute: None.
Other sections: §§ a226.17 and 226.22.
Previous regulations: Interpretation § 226.813.
1981 changes: The use of Appendix D is limited to multiple-advance loans for construction purposes.

Appendix E--Rules for Card Issuers that Bill on a Transaction-By-Transaction Basis

Statute: None.
Previous regulation: Interpretation § 226.709.
Other 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

References

Statute: None.
Previous regulation: § 226.5(a)(3)(ii), footnote 5(a).
Other sections: § 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.

Appendices G and H--Open-End and Closed-End Model Forms and Clauses

1. Permissible changes: Although use of the model forms is not required, creditors using them properly will be deemed to be in compliance with the regulation. Creditors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability. However, revised forms must be substantially similar to the model forms in order to insulate creditors against civil liability. The rearrangement of the model forms may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms. Creditors making revisions with that effect will lose their protection from civil liability. Examples of acceptable changes under the substantially similar standard include:
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, filling in "N/A" (not applicable) or "o", crossing our, 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.

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 disclosure of the dollar amount should be added.

2. Model G-2. This model contains the notice of liability for unauthorized use of a credit card.

3. Model 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) 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 models may, however, 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 savings or checking account for payment.

The rights stated in the special rule for credit card purchases and any limitations on those rights.

These notices 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 notice 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.

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 three 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 (1) of the notice is an estimate. The language of the parenthetical is not optional.

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 § 226.17:

The creditor's address or telephone number.

The consumer's name.

The consumer's address.

The consumer's account number.

The date of the transaction.

An acknowledgment of receipt.

The creditor may also delete 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 and rebate disclosures (See Samples H-12 and H-14).
Other permissible changes include:
Combining required terms where several numerical disclosures are the same, for instance, if the "total of payments" equals the "total sale price."
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 "federal box".
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 alternative 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.
Adding or 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 to reflect the fact that the lesser of two charges may be imposed or that charges are subject to a maximum limit, or to briefly describe what constitutes a late payment (for instance, "any payment received 15 days after the due date").
2. Model H-3. Creditors have considerable flexibility in filling out Model H-3 (itemization of the amount financed) since the categories listed are not mutually exclusive. Any prepaid finance charge, however, must be listed in that category although it also may be listed as a fee paid to third parties if applicable. In the category of "amount paid to you directly", creditors may include checks that are payable jointly to a consumer and a third party.
Appropriate revisions may be made to this form without loss of protection from civil liability for proper use of the model forms. For example, creditors may:
Rearrange the sequence of the disclosures.
Present the disclosures in a mathematical progression--for example by showing the sum of the "amount paid directly to you", "amount paid on your account" and "amounts paid to others" as a subtotal, from which is subtracted the prepaid finance charge, to reach the amount financed.
Include additional categories, such as cash price and downpayment.
Identify certain third party payees (public officials, government agencies, credit bureaus, appraisers, and insurance companies) by names, rather than in generic or other general terms.
3. Model H-4. This model contains the variable rate model clauses and is intended to give creditors considerable flexibility in structuring variable rate disclosures to fit individual plans. 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.

4. Model H-5. This contains the demand feature clause.

5. Model H-6. This contains the assumption clause.

6. Model H-7. This contains the required deposit clause.

7. 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 three 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 (1) of the notice is an estimate. The language of the parenthetical is not optional.

8. 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.

9. 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.

10. 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.

11. 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).)

12. 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 fifteen 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 seven-year call option required by the Federal National Mortgage Association (FNMA) in states where due-on-sale clauses are prohibited.

13. Sample H-14. This sample illustrates a variable rate mortgage. The loan amount is $44,900, payable in 360 monthly installments at an initial interest rate of 14.75%. All payment periods are regular. Two points ($898) have been imposed and included in the prepaid finance charge. The note provides that the interest rate may vary with the lender's prime rate, with a maximum permissible increase of 5% over the term of the mortgage. The interest rate may not vary more frequently than once a year, and may not increase by more than 1% annually. Rate fluctuations will be reflected in the monthly payment amount.

14. Sample H-15. This sample illustrates a graduated payment mortgage with a five-year graduation period and a 7 1/2 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 1/4 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.

References

Statute: §§ 105, 130.

1981 changes: The model forms and clauses have no counterpart in the old regulation.

Appendix I--Federal Enforcement Agencies

Statute: § 108.

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 which 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 which involve any type of irregularities. These tables may be obtained from any Federal Reserve Bank or from the Board in Washington, D.C. 20551, upon request.

References

Statute: § 107.
Other sections: § 226.22.
Previous regulation: § 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 all cases where the transaction term equals 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.
Board of Governors of the Federal Reserve System, May 20, 1981.

James McAfee,

Assistant Secretary of the Board.