

## RULES and REGULATIONS

### FEDERAL RESERVE SYSTEM

12 CFR Part 226

Regulation Z; Docket No. R-0654  
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Truth in Lending; Credit and Charge  
Card Disclosures

Thursday, April 6, 1989

AGENCY: Board of Governors of the  
Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation Z (Truth in Lending) to implement the Fair Credit and Charge Card Disclosure Act amendments to the Truth in Lending Act. The law, enacted on November 3, 1988, requires credit and charge card issuers to provide credit disclosures in certain direct mail, telephone and other applications and solicitations to open credit and charge card accounts. Card issuers will also be required to give cardholders written notice regarding the renewal of their credit and charge card accounts before a cardholder has to pay a fee to renew the account. In addition, the law requires credit card issuers to provide cardholders with written notice of a change in the company providing credit insurance on credit card accounts.

EFFECTIVE DATES: April 3, 1989, but compliance is optional until August 31, 1989 (November 29, 1989, for applications and solicitations subject to § 226.5a(e) of the regulation).

## FOR FURTHER INFORMATION

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## SUPPLEMENTARY INFORMATION:

### (1) General

On November 3, 1988, the Fair Credit and Charge Card Disclosure Act (FCCCDCA), Pub. L. No. 100-583, 102 Stat. 2960, was enacted into law. The law amends sections 111 (state law preemption), 122 (form of disclosure), 127 (open-end credit disclosures), 130 (civil liability), and 136 (information collection by Board) of the Truth in Lending Act (TILA). The purpose of the law is to provide for more detailed and uniform disclosure of rates and other cost information in applications and solicitations to open credit and charge card accounts. Consumers will be given basic cost information about credit and charge cards at an earlier time than under the current provisions of the TILA in order to enhance credit shopping. Under the current provisions of the TILA, card issuers are required to give consumers credit disclosure statements before the first transaction on an account.

The new law requires credit and charge card issuers to provide disclosures to consumers in three situations involving

applications and solicitations to open credit or charge card accounts: (1) Direct mail applications and solicitations; (2) telephone solicitations; and (3) applications and solicitations that are made available to the general public (such as applications commonly referred to as "take-ones" or those contained in catalogs, magazines, or other generally available publications). Most of the required disclosures must be provided in the form of a table prescribed by the Board.

In addition to the disclosures required with applications and solicitations, the law requires disclosures in two other circumstances. First, card issuers that impose fees to renew credit and charge card accounts must provide cardholders with renewal notices (including a new set of credit disclosures) before a renewal fee is payable. Second, credit card issuers must provide disclosures if they offer credit insurance and decide to change insurance providers. As part of the disclosures, credit card issuers are required to disclose any increase in rate or substantial decrease in coverage as a result of the change.

The law amends section 130 of the TILA, the civil liability provision, to provide that a card issuer shall have liability under the new provisions on credit and charge card applications, solicitations and renewal notices (section 127 (c) and (d)) only to cardholder who pays an annual or other periodic fee or a membership fee, or who uses a credit or charge card. The law also requires the Board to collect credit card price and availability information from a sampling of financial institutions and make it available to the public on request. The law amends section 111 of the TILA, the provision on the effect of the act on other laws. State laws relating to

the disclosure of credit information in credit or charge card applications and solicitations subject to the requirements of new section 127(c) of the TILA, or any renewal notice subject to the requirements of new section 127(d), are preempted as of November 3, 1988, the date of enactment of the FICRA (since the delayed effective date in section 7 of the FICRA refers only to the regulations implementing the disclosure provisions and is silent as to the state law provisions).

On December 23, 1988, the Board published a proposed rule to amend Regulation Z to implement the new law (53 FR 51785). The Board received approximately 120 comments on the proposal. Many of the commenters stated their support for the manner in which the Board proposed to implement the statutory amendments. There was, however, some concern about the possible scope of coverage of the proposed rule, the requirement of mandated terminology for certain disclosures, and operational problems associated with certain timing rules and disclosure requirements. These specific concerns and others have been addressed in the final rule.

Based on a review of the comments and further analysis of the law, the Board is now adopting a final rule implementing the FICRA. The rule is effective April 3, 1989. Mandatory compliance by card issuers with the requirements of the rule is effective as of August 31, 1989, except with regard to applications and solicitations made available to the general public that are subject to § 226.5a(e) of the regulation, for which mandatory compliance is effective as of November 29, 1989.

(2) The Amendments to Regulation Z

The Board is adding new § 226.5a to Regulation Z to implement most of the provisions of the FICCDCA. The new section has been added between § 226.5 (general open-end disclosure requirements) and § 226.6 (initial open-end disclosure statement) because of the early timing for providing the disclosures. The disclosures required when renewing a credit or charge card account or changing an insurance provider on a credit card account are contained in § 226.9 (subsequent disclosure requirements) of the regulation. The disclosure requirements for credit and charge cards have been combined to avoid unnecessary duplication.

The structure of the final rule differs from the proposal to improve readability. For example, rules regarding coverage and the format of disclosure are contained in paragraph (a) of new § 226.5a. The items of credit cost information required to be disclosed in applications and solicitations are all contained in paragraph (b). Paragraphs (c), (d) and (e) address the three circumstances in which the disclosures must be given: Direct mailings; telephone applications and solicitations; and "take-ones" and other applications and solicitations made available to the general public.

Unless otherwise noted, citations in the discussion of the final rule are to the amended sections of the TILA. This notice provides guidance on a number of questions asked by commenters. Much of this guidance will be incorporated into the Board's official staff commentary to the regulation.

#### General Coverage

The disclosure requirements of § 226.5a apply generally to applications and solicitations to open "traditional" credit or charge card accounts that are used primarily to purchase goods and services. Therefore, for example, applications or solicitations to open overdraft lines of credit tied to asset accounts accessible by use of a debit card are not subject to the disclosure requirements of § 226.5a. Similarly, open-end lines of credit accessed solely by account numbers are not subject to the requirements of § 226.5a. In addition, home equity lines of credit that may be accessed by the use of a credit or charge card and are subject to the Home Equity Loan Consumer Protection Act of 1988 amendments to the TILA are not subject to § 226.5a.

Applications and solicitations to add a credit or charge card to an existing open-end plan are not subject to the requirements of § 226.5a. This is the case both for plans in existence before the effective date of the FICCDCA and those opened after the effective date.

Disclosures under § 226.5a are generally required in applications and solicitations to open credit and charge card accounts that are initiated by the card issuer. Applications provided at the consumer's request are not covered by § 226.5a, even if the request is made in response to the card issuer's invitation to request the application. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application, the application sent to the consumer need not contain any disclosures under § 226.5a. Similarly, if the consumer is invited to call and make an oral application on the telephone, § 226.5a does not apply. If, however, the card issuer initiates the discussion about

opening an account and at that time takes an oral application, that is subject to § 226.5a (specifically, to § 226.5a(d)). The requirements of § 226.5a do not apply to a general purpose application unless the application, or materials accompanying it, specifically refer to its capability of being used to open a credit or charge card account. Section 226.5a also does not apply to general media advertising that does not include an application or solicitation to open a card account. Further detail of the types of accounts and applications and solicitations that are subject to the requirements of § 226.5a is contained in the section by section discussion below of the final rule implementing the FCCCDA.

Section 226.1--Authority, Purpose, Coverage, Organization, Enforcement and Liability

Paragraph (a)--Authority

Instead of adding to the authority section each law that amends the TILA, this paragraph merely refers to the TILA as amended, thus incorporating all such laws. As a result, specific references to laws amending the act have been removed as unnecessary.

Section 226.2--Definitions and Rules of Construction

Paragraph (a)--Definitions

Section 226.2(a)(15) of the regulation is revised to include a definition of "charge card" within the definition of "credit card." This term is used in § 226.5a and is also applicable in §§ 226.9(e) and 226.28(d). Generally, these are credit cards used in connection with accounts on which outstanding balances cannot be

rolled over from one billing cycle to another and are payable when a periodic statement is received. Section 127(c)(4)(E) of the act defines a charge card as a credit card (as defined in Regulation Z, § 226.2(a)(15)) which is not subject to a finance charge. The act's disclosure provisions applicable to charge cards require the issuer to disclose transaction charges for both purchases and cash advances. Since, under Regulation Z, these charges are finance charges, it is clear that charge card accounts can involve finance charges despite the act's definition. The regulation modifies the act's charge card definition for clarity, so that the term charge card is defined to mean a credit card on an account for which no periodic rate is used to compute a finance charge. Consequently, card issuers who offer cards that may be subject to finance charges such as cash advance fees--but for which no periodic rate is used to compute the finance charge on an outstanding balance-- are characterized as charge card issuers for purposes of § 226.5a and would give the applicable charge card disclosures.

Under § 226.2(a)(17)(iv) of the regulation, card issuers extending closed-end credit are subject to certain of the open-end credit disclosure provisions. This section, which also sets forth the provisions that are not applicable to such card issuers, has been revised to except these card issuers from the disclosure requirements of §§ 226.5a and 226.9 (e) and (f).

Section 226.5--General Disclosure Requirements

Paragraph (a)--Form of Disclosures

Paragraph (a) (1) and (2). The Board has

revised footnotes 8 and 9 to § 226.5. Footnote 8 is revised to indicate that the terms "annual percentage rate" (APR) and "finance charge," when used in the disclosures required under §§ 226.5a and 226.9(e), need not be more conspicuous than other terms. Footnote 9 is revised to indicate that the disclosures given under §§ 226.5a and 226.9(e) need not be in a form that the consumer can keep. Nevertheless, when the disclosures under § 226.9(e) are provided on a periodic statement, and are interspersed among or are part of the disclosures required by § 226.7, the regulation's requirements for disclosures on periodic statements apply.

Paragraph (a)(3). Paragraph (3) is added to explain that the standard for certain disclosures required under § 226.5a differs from the general clear and conspicuous standard for TILA disclosures (although the general standards for TILA disclosures for open-end credit remain applicable in § 226.5a). Certain disclosures under § 226.5a must be given in the form of a table or in a prominent location on or with an application or solicitation.

#### Paragraph (b)--Time of Disclosures

Paragraph (b)(3). Paragraph (3) is added to provide a general cross reference to § 226.5a for the timing requirements for disclosures in credit and charge card applications and solicitations.

#### Section 226.5a--Credit and Charge Card Applications and Solicitations

##### Paragraph (a)--General Rules

Paragraph (a) contains general rules applicable to this section. This paragraph has rules on format, coverage, and

disclosure of certain fees. The introductory language provides that disclosures are to be given on or with an application or solicitation to open a credit or charge card account; the specific disclosure requirements in paragraphs (c), (d), and (e) merely refer to an "application or solicitation," since the limitation to opening a credit or charge card account is set forth here. Paragraph (a)(1). Paragraph (a)(1) has been added to the final rule to provide guidance on the type of solicitation subject to § 226.5a. For purposes of this section, a solicitation is defined as an offer by a card issuer to a consumer to open a credit or charge card account that does not require the consumer to complete an application. (Generally, these solicitations are referred to as "preapproved" solicitations.) Thus, for example, if a card issuer contacts a consumer (whether by direct mail, telephone, or other means) about opening an account but requires the consumer to complete an application, that contact does not meet the definition of "solicitation." Accordingly, it is not covered by this section, unless the contact itself includes an application (for example, a written application form in a direct mailing or "take-one," or an oral application in a telephone contact initiated by the card issuer). Paragraph (a)(2). Paragraph (a)(2) describes the form to be used in disclosing the credit information set forth in paragraph (b). The information on APRs (including variable rate information), fees for the issuance or availability of a card, minimum and transaction charges, grace periods, balance computation methods and charge card repayment, to the extent applicable, must be provided in the form of a table with headings.

The table and certain disclosures under § 226.5a(e) (for example, the disclosure of a toll-free telephone number) must be prominently located on or with the application or solicitation. There are, however, no requirements that the disclosures be in any particular place on or with the application or solicitation, or that the disclosures be in any particular type size or typeface. The disclosure of fees for cash advances, late payments or exceeding a credit limit may be provided either in the table or clearly and conspicuously elsewhere on or with the application or solicitation. A card issuer has the option of disclosing some of these fees in the required table and some outside of the table.

The final rule provides more flexibility than the proposal did with regard to the tabular format disclosures. Several model disclosure forms are provided in Appendix G to the regulation, any of which will comply with the tabular format requirement if used properly.

Tables designed by card issuers to comply with § 226.5a need not be identical but must be substantially similar to those found in Appendix G of the regulation; this standard applies to the headings as well as the content and format of the tables (except that the term "grace period" must be used in making that disclosure). To promote continued uniformity of credit disclosures under the TILA, the terminology in the tables must be consistent with (that is, close in meaning, though not necessarily identical to) the terminology used in TILA disclosures under §§ 226.6 and 226.7 of the regulation.

Card issuers offering several types of card accounts may disclose the various terms for the accounts in a single table or provide a separate table for each account. Similarly, where rates or other

terms vary from state to state, card issuers may list the states and the various disclosures in a single table or provide separate tables.

In general, the table containing the disclosures required by § 226.5a should not contain additional information.

Additional information may be presented outside the required table. Further detail about the tabular format disclosures is provided in the discussion of Appendix G below.

Paragraph (a)(3). A number of commenters raised issues concerning coverage of the proposed rule given the broad definition of the term "credit card" in the regulation. Among other things, the commenters argued that congressional intent was to require disclosures only for "traditional" credit card accounts used primarily to purchase goods and services, and not for other types of accounts that do not fall within such a category or for which the use of a credit or charge card as an access device is merely incidental to the product being offered.

Section 226.5a does not apply to overdraft lines of credit tied to asset accounts that are accessed by check guarantee or debit cards, nor does the section apply to lines of credit accessed by check guarantee or automated teller machine (ATM) cards. Of course, if a traditional credit card is also used to access such lines, the account would be covered by this section.

With regard to home equity lines, commenters pointed out that such plans would be fully regulated under the Home Equity Loan Consumer Protection Act of 1988 (Pub. L. 100-709) and that to some extent the timing and content of disclosures common to both the FICRA and the home equity law may be duplicative. Therefore, paragraph

(a)(3) excepts from the requirements of § 226.5a home equity plans subject to the new home equity law.

Paragraph (a)(4). Paragraph (a)(4) (paragraph (a)(1) in the proposed rule) implements section 127(e)(1) of the act and provides that if the amount of any fee required to be disclosed is determined on the basis of a percentage of another amount--for example, if a card issuer imposes an annual fee based on a percentage of the credit line--the card issuer may state the percentage and what it is applied to rather than the dollar amount of the fee. If a card issuer is able to determine the dollar amount of the fee, the card issuer would, of course, be permitted to disclose that amount.

Paragraph (a)(5). Paragraph (a)(5) (paragraph (a)(2) of the proposed rule) implements section 127(f) of the act. It provides that if any cash advance, late payment or over-the-credit-limit fee required to be disclosed varies from state to state, the card issuer may disclose the range of the fee instead of disclosing the amount of the fee. If a range is disclosed, the card issuer must include a statement that the amount of the fee varies from state to state. The range may be stated as zero (for states where no fee applies) to the amount of the highest authorized fee. The option is limited to the three types of fees mentioned above.

#### Paragraph (b)--Required Disclosures

Paragraph (b) sets forth all the items concerning credit costs and terms required to be disclosed in credit and charge card applications and solicitations subject to this section. The disclosure requirements for credit card accounts differ from those for charge card accounts. Credit card issuers would have to provide all the applicable disclosures

in paragraph (b), except for the disclosure in paragraph (b)(7). Charge card issuers would have to provide the applicable disclosures in paragraphs (b)(2), (4), and (7) through (10) only. Paragraph (b)(1)--APR disclosure. Paragraph (b)(1) (paragraph (b)(1)(i) in the proposed rule) implements section 127(c)(1)(A)(i) of the act. Credit card issuers are required to disclose each periodic rate that may be used to compute the finance charge on an outstanding balance, expressed as a corresponding APR. Card issuers may, but need not, also disclose the periodic rate itself in the table. This provision applies to rates applied to purchase balances only (and not to cash advance balances as previously proposed). Whenever more than one rate applies to an outstanding balance, the card issuer is required to disclose the range of balances to which each rate applies. Introductory rates--Some card issuers offer introductory (discount or premium) rates. Under paragraph (b)(1), card issuers are required to disclose the "regular" rate that would apply to the card account. For example, if the rate on a card is tied to an index, the card issuer would be required to disclose in the table a fully-indexed rate that complies with the timing requirements of paragraphs (c), (d) or (e). Similarly, if an introductory rate is offered on an account with a fixed rate, the rate that will apply after the introductory rate expires must be disclosed in the table. The card issuer may, but need not, also disclose the introductory rate. If such a rate is disclosed in the required table, the card issuer must also disclose the time period the rate will remain in effect. This rule applies only where rates are in effect for a limited or specified period of time rather than to situations where a

card issuer offers alternative pricing structures in which different rates apply to different accounts (or multiple rates apply to one account). In the latter situation, the card issuer must disclose all such rates in the table required by § 226.5a. (See discussion under paragraph (b)(2) for treatment of introductory fees and fee waivers.)

Variable-rate disclosure--If an account is subject to a variable rate, the credit card issuer is also required to disclose the fact that the rate is variable and how the rate is determined. The card issuer need only identify the index or formula and the margin or spread above the index to satisfy the requirement of disclosing how the rate is determined. The amount of the margin must be given, although the card issuer may disclose the margin as a range. The card issuer may, but need not, also disclose in the required table a maximum and minimum APR (that is, caps and floors).

Paragraph (b)(1)(ii) sets forth the rules on what will be considered an accurate APR for an account with a variable rate. The proposed rule stated that an APR in effect at any time within 30 days before mailing would be considered to be accurate for purposes of the variable rate APR disclosure. Many commenters suggested that 30 days would not provide sufficient time to prepare and mail solicitation material, especially in view of the fact that large mailings may be involved and that the timing may depend in part on third party vendors such as printers over whom a card issuer may not have complete control. In light of these problems, the Board has provided in the final rule that in direct mail applications and solicitations subject to § 226.5a, an APR in effect at any time within 60 days before the mailing will be deemed accurate for an

account with a variable rate. Thus, a change in an index resulting in a change in the APR within 60 days before the mailing would not invalidate the disclosure.

In an application or solicitation subject to § 226.5a(e)--those made available to the general public--an APR in effect at any time within 30 days before the date of printing will be deemed to be an accurate rate in effect at the time of printing for a card account with a variable rate.

Paragraph (b)(2)--Fees for the issuance or availability of a card. Paragraph (b)(2) (paragraph (b)(1)(ii) of the proposed rule) implements section 127(c)(1)(A)(ii)(I) and (4)(A)(i) of the act. Credit and charge card issuers are required to disclose any annual or other periodic fee or any one-time fee imposed for the issuance or availability of a credit or charge card (such as a membership fee), including fees based on account activity or inactivity. To promote easy comparison of disclosures, periodic fees must be expressed as an annualized account. Therefore, for example, if a card issuer imposed a quarterly fee, the issuer must disclose how much the fee would be on an annual basis.

With regard to one-time fees for the issuance or availability of a card, the Board requested comment on whether fees such as application fees and fees associated with a home equity line of credit should be interpreted to fall within such category of fees. The final rule exempts home equity lines of credit from the requirements of § 226.5a for the reasons previously discussed under paragraph (a)(3). Application fees, as described under § 226.4(c)(1) of the regulation, are generally considered administrative fees for processing applications for credit rather than fees



for the issuance or availability of credit and are not required to be disclosed under § 226.5a.

The disclosure of one-time fees for the issuance or availability of a card under § 226.5a is limited to fees related to opening the account, such as one-time membership fees. Therefore, fees to reissue a lost card, statement reproduction fees and the like are not required to be disclosed under § 226.5a(b)(2) as fees for the issuance or availability of a card.

Some commenters asked whether a membership fee to join an organization that provides a credit card is deemed to be a fee for the issuance or availability of a card subject to § 226.5a. If an application or solicitation to become a member of an organization results in the automatic issuance of a credit or charge card, the application or solicitation for membership would be considered one to open a credit card account requiring disclosures under § 226.5a. The membership fee would be disclosed as a fee for the issuance or availability of a credit or charge card. If, however, membership in the group merely confers eligibility to apply for a credit or charge card, an application or solicitation to join the group is not covered by § 226.5a and the membership fee is not a fee for the issuance of a card.

Other commenters asked whether fees for credit or charge card "enhancements" (such as travel insurance or card registration services for protection against loss) would be required to be disclosed as fees for the issuance or availability of a credit or charge card. Whether credit or charge card enhancement fees are required to be disclosed as fees for the issuance or availability of a card depends on whether such fees are payable at the cardholder's

discretion. For example, a card issuer may offer a credit card account on which a \$20 fee is imposed for the issuance of the card with optional enhancements available for an additional \$10 fee. Only the \$20 fee is required to be disclosed under § 226.5a(b)(2). If on the other hand, a card issuer offers a credit card account with a fee of \$30 and with enhancements automatically included, the full \$30 must be disclosed under § 226.5a(b)(2).

Some card issuers have a variety of pricing structures for fees for the issuance or availability of a credit or charge card. All such fees must be disclosed under paragraph (b)(2) unless the fees are introductory (or are otherwise offered on a limited basis). In the latter instance, the fees may but need not be disclosed. Similarly, some card issuers permit waivers of such fees for various reasons; fee waivers may but need not be disclosed as part of the paragraph (b)(2) disclosure. If introductory fees or fee waiver disclosures are provided in the required table, a card issuer must also disclose the time period the fees or waivers will remain in effect.

Paragraph (b)(3)--Minimum finance charge. Paragraph (b)(3) (paragraph (b)(1)(iii) of the proposed rule) implements section 127(c)(1)(A)(ii)(II) of the act and requires credit card issuers to disclose any minimum or fixed finance charge that could be imposed for any period during which any extension of credit that is subject to a finance charge is outstanding. This would occur where the amount of such finance charge is greater than the finance charge that would otherwise be imposed for such period under the applicable APR.

Paragraph (b)(4)--Transaction charge for purchases. Paragraph (b)(4) (paragraph

(b)(1)(iv) of the proposed rule) implements section 127(c)(1)(A)(ii)(III) and (4)(A)(ii) of the act. Credit and charge card issuers must disclose any transaction charge imposed in connection with the use of the card to purchase goods and services. This provision does not cover fees for cash advances, although such fees are required to be disclosed under § 226.5a(b)(8) of the regulation. A few commenters pointed out that this provision could be interpreted to require card issuers to disclose transaction charges imposed by a person other than the card issuer, such as a seller of goods honoring a credit or charge card. To avoid any confusion, § 226.9(d)(2) of the regulation--finance charges imposed at the time of transaction--has been amended to provide that card issuers providing disclosures under § 226.5a have no responsibility with regard to disclosure of such transaction charges. Paragraph (b)(5)--Grace period for purchases. Paragraph (b)(5) (paragraph (b)(1)(v) of the proposed rule) implements section 127(c)(1)(A)(iii) of the act. Credit card issuers must disclose the date by which or the period within which any credit extended under credit card accounts for the purchase of goods or services must be repaid to avoid incurring a finance charge. The term "grace period" must be used either in the heading of the required table, or in the body of the table. If a card issuer does not offer a grace period, the card issuer must disclose that fact. If the length of the grace period varies, a card issuer may disclose the range, the minimum or the average number of days in the grace period, if the disclosure is identified as a range, minimum or average, respectively. No disclosure about grace periods for cash advances is required.

Paragraph (b)(6)--Balance computation method for purchases--Paragraph (b)(6) (paragraph (b)(1)(vi) in the proposed rule) implements section 127(c)(1)(A)(iv) of the act. Credit card issuers are required to disclose the method of computing the balance on which finance charges will be calculated for the purchase of goods and services. (No disclosure of the method of computing the balance for cash advances is required). In making this disclosure, card issuers are required to identify the balance of computation method used on the account by the name provided in the regulation's definitions of the most common balance computation methods in paragraph (g) of § 226.5a. Credit card issuers are required to provide an explanation of the balance computation method used if it is not one of the methods described in the regulation. The level of detail of the explanation need not be as great as that required for the initial disclosures under § 226.6(a)(3) of the regulation (contrary to the statement in the discussion accompanying the proposed rule). Rather, the description need not be more detailed than the descriptions contained in § 226.5a(g). A card issuer is permitted to provide the explanation outside of the table if a reference to it is included in the table. Several commenters requested additional guidance to assist them in determining the appropriate balance method to be disclosed. For example, some commenters stated that their average daily balance method might include new purchases or cover two billing cycles if the consumer carries a purchase balance, but would be different if no balance is carried over or if the purchase balance was paid within a grace period. To enable card issuers to more easily determine the appropriate balance

method for purchases to be disclosed, § 226.5a(b)(6) explains that card issuers should assume a purchase balance will exist at the end of the grace period, if any. (See paragraph (g) for a detailed discussion of the names and definitions of balance calculation methods identified as the most common.)

Paragraph (b)(7)--Due and payable statement. Paragraph (b)(7) (paragraph (b)(1)(vii) in the proposed rule) implements section 127(c)(4)(A)(iii) of the act which applies only to charge card issuers. Charge card issuers must disclose that charges incurred by use of a charge card are payable when the periodic statement reflecting those charges is received by the cardholder. The disclosure should be substantially similar to that set forth in this paragraph; it does not have to be identical.

Language in the disclosure may be modified to more accurately reflect the circumstances of repayment under the charge card account.

Paragraphs (b)(8) through (10)--Additional fee disclosures. Paragraphs (b)(8) through (10) (paragraph (b)(2) in the proposed rule) implement section 127(c)(1)(B) and (c)(4)(B) of the act which requires credit and charge card issuers to disclose fees for cash advances, late payments or exceeding a credit limit. These disclosures may be provided in the required table along with the disclosures mentioned in paragraph (b)(1) through (7) above, or may be provided elsewhere clearly and conspicuously on or with an application or solicitation.

Several commenters asked for guidance on whether specific types of fees are covered or not covered by paragraph (b)(8), the cash advance fee disclosure, and paragraph (b)(10), the over-the-limit fee disclosure. Paragraph (b)(8) requires

only the disclosure of cash advance fees that are finance charges under § 226.4 of the regulation. For example, a charge imposed to obtain a cash advance at an ATM is not a required disclosure under this section if the same charge is imposed for all transactions at an ATM whether or not they involve an extension of credit (see the Official Staff Commentary to Regulation Z, 12 CFR 226.4(a)-5 (Supp. I) for guidance). The disclosure in paragraph (b)(10) of fees for exceeding a credit limit does not include other types of default or service fees such as a fee for reinstating credit privileges or a fee for the dishonor of a check drawn on a check-accessible credit line that, if paid, would have caused the credit limit to be exceeded (see the Staff Commentary, 12 CFR 226.4(c)(2)-2 (Supp. I) for guidance).

#### Paragraph (c)--Direct Mail Applications and Solicitations

Paragraph (c) (part of paragraph (b) in the proposed rule) implements the disclosure requirements for direct mail applications and solicitations to open a credit or charge card account provided in section 127(c)(1) and (c)(4)(A) and (B) of the act. In general, disclosures must be accurate as of the time of mailing, although special rules are contained in paragraph (b) concerning the APR disclosure on a card account with a variable rate. Applications and solicitations mailed to consumers through the mailing of catalogs, magazines, or other generally available publications are subject to the requirements of paragraph (e), rather than paragraph (c).

#### Paragraph (d)--Telephone Applications and Solicitations

Paragraph (d) (paragraph (c) in the proposed rule) implements section 127(c)(2) and (c)(4) (A) and (B) of the act and contains the disclosure requirements for telephone solicitations and certain telephone applications to open a credit or charge card account. Several commenters asked for clarification about the type of telephone solicitation subject to this paragraph. The addition of the definition of a solicitation subject to § 226.5a in paragraph (a)(1) of this section provides clarification on this point. Paragraph (d) applies if a telephone conversation between a card issuer and consumer may result in the issuance of a card as a result of a card issuer-initiated offer to open a credit or charge card account for which the card issuer does not require any application (that is, a "preapproved" telephone solicitation). It also applies where the card issuer initiates the contact and at the same time takes application information over the telephone. Telephone applications initiated by the consumer, however, would not be subject to this paragraph. Mere telephone inquiries by a card issuer as to a consumer's interest in applying for a credit or charge card also would not constitute a telephone "solicitation" subject to this paragraph. Finally, paragraph (d) does not apply where no card will be issued--because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides either during the telephone conversation or later not to issue the card. Paragraph (d)(1). Paragraph (d)(1) implements section 127(c)(2)(A) of the act, and requires card issuers generally to orally disclose those items in paragraph (b) that would normally be

disclosed in tabular format; cash advance, late payment and over-the-limit fees do not have to be disclosed. Card issuers are not required to record conversations to evidence compliance with this paragraph; written procedures indicating how disclosures are made under this paragraph would be sufficient evidence of compliance.

Paragraph (d)(2). Paragraph (d)(2) implements section 127(c)(2)(B) of the act which permits an alternative disclosure for telephone solicitations and applications. The regulation makes this alternative disclosure available to both credit and charge card issuers.

If a card issuer does not impose a periodic or one-time fee for the issuance or availability of a card or does not impose such a fee unless the consumer signifies acceptance by using the card, the card issuer need not give the oral disclosures at the time of the solicitation or application. The card issuer, however, is required to disclose in writing all of the applicable terms required in paragraph (b) (in tabular format, to the extent required generally) within 30 days after the consumer requests the card, but in no event later than the delivery of the card. Therefore, if a consumer requests a card during the solicitation and the card is sent to the consumer 10 days later, for example, the disclosures have to be provided at that time.

The card issuer must also explain in the written disclosure notice that the consumer is not obligated to accept the card and that the consumer will not be obligated to pay any fee or charge disclosed unless the consumer elects to accept the card by using it.

Paragraph (e)--Applications and Solicitations Made Available to General Public

Paragraphs (e) (paragraph (d) in the proposed rule) implements the disclosure requirements for applications and solicitations to open credit and charge card accounts that are made available to the general public, including "take-ones" and those contained in catalogs, magazines and other generally available publications, as provided in section 127(c)(3) and (c)(4)(C) of the act. (In the case of credit unions, this paragraph applies to applications and solicitations to open credit or charge card accounts made available to those in the general field of membership.) Applications available only at the consumer's request are not considered to be made available to the general public; thus, for example, an application to open a card account given to a consumer at the consumer's request at a retail store or in a bank would not be covered.

Some commenters asked for guidance on the duty of a card issuer with regard to old applications distributed to the public prior to the effective date, as some of these applications may be in locations that are not within the control of the card issuer. It is expected that card issuers will take steps to see that applications with the required disclosures are substituted for old ones by November 29, 1989, the effective date for mandatory compliance with this provision. It should be noted that this effective date is 90 days later than the effective date for mandatory compliance for the rest of the rule, which should allow sufficient time to accomplish this. If an application or solicitation distributed prior to the effective date is received by the card issuer after the effective date for mandatory compliance, the card issuer will not be deemed to be in violation of the FCCDA so long as

the card issuer, in processing the application, provides disclosures to the consumer in accordance with paragraph (e) within 30 days of receipt of the application, but in no event later than the delivery of the card.

Card issuers may satisfy the requirements of paragraph (e) in any of three ways. The regulation makes the options available to both credit and charge card issuers.

Paragraph (e)(1). Under the option in paragraph (e)(1), the card issuer must provide all the required credit disclosures, as applicable, in the requisite format on the application or solicitation, and indicate: (1) That the disclosures are accurate as of the date they were printed; (2) the date of printing (disclosure of the month and year is sufficient to fulfill this requirement); (3) that the terms are subject to change after such date; and (4) that the consumer should contact the creditor for any changes in the information disclosed. (If a rate is variable, § 226.5a(b)(1)(ii) provides that any rate in effect 30 days before the date of printing is deemed accurate.) The card issuer must also provide a mailing address, or a toll-free telephone number (for nonlocal calls made from an area code other than that used in the card issuer's dialing area), for consumers to obtain information about changes in the disclosures. If the card issuer elects to provide an address rather than a toll-free telephone number, the card issuer may also provide a local telephone number, rather than a toll-free number. All of the disclosures under paragraph (e)(1) must be displayed in a prominent location on the application or solicitation.

Paragraph (e)(2). Under the option in paragraph (e)(2), the card issuer may include on or with an application or

solicitation the disclosures required under § 226.6 (a) through (c) of the regulation. It should be noted that the disclosure of this information alone would not satisfy the initial disclosure requirements under the TILA. If, however, the card issuer in complying with this section provides all the disclosures required under § 226.6, in a form that the consumer may keep, and in accordance with the other requirements under § 226.6, the card issuer will have satisfied the initial disclosure requirements under § 226.6 as well as the disclosure requirements for § 226.5a. Some commenters suggested that the requirements in paragraph (e)(1)(ii) (disclosure of the printing date and related information) be incorporated into (e)(2). This suggestion has not been taken because the timing requirements for the disclosure options differ. The disclosures under paragraph (e)(2)(i) must, in general, be current as of the time that they are made available to the public (mailed or delivered), whereas the disclosures in paragraph (e)(1)(i) need only be current as of the time of printing. Paragraph (e)(2) also requires the card issuer to disclose a toll-free telephone number or a mailing address for use in asking about changes in the information disclosed.

Paragraph (e)(3). Under the option in paragraph (e)(3), a card issuer may provide a statement on the application or solicitation that there are costs associated with the use of the credit or charge card and that the applicant can contact the card issuer to request specific information about those costs by calling a toll-free telephone number or by writing to an address specified on the application or solicitation. The card issuer would have to provide both a toll-free telephone number (for nonlocal

calls made from an area code other than that used in the card issuer's dialing area) and a mailing address at which the consumer could contact the card issuer to obtain the required information. A card issuer may not use this option if the card issuer includes on or with the application or solicitation any of the credit disclosures required by the act. Paragraph (e)(4). Regardless of the option used, the act provides that, upon receiving a request by a consumer for any of the credit information required to be disclosed under the act, card issuers must promptly disclose all of the required credit disclosures. Information is promptly disclosed if it is given within 30 days of a consumer's request for information but in no event later than delivery of the credit or charge card. Card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with paragraph (e) (1) or (2), and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the card issuer may provide only the items of information that have changed; the card issuer may, but would not be required to, provide information about disclosures for which there are no changes from those previously provided on or with the application or solicitation. Furthermore, if a consumer requested only one particular item, the card issuer could supply just that requested item rather than the entire list of disclosures. If, however, the card issuer has made disclosures in accordance with the option in paragraph (e)(3), and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information would have to be given.

A response to an information request

may be provided orally or in writing, at the card issuer's option, regardless of whether the consumer's request is oral or written. Further, if the card issuer chooses to respond to an information request in writing, it may do so using the general content and format for either paragraph (e) (1) or (2). Information provided in writing need not be in a tabular format.

#### Paragraph (f)--Special Charge Card Rule--Card Issuer and Person Extending Credit Not the Same Person

Paragraph (f) (paragraph (e) of the proposed rule) implements section 127(c)(4)(D) of the act. Where the charge card issuer and the person maintaining an open-end credit plan that the card accesses are different persons, this provision permits the charge card issuer to disclose only the information required for the charge card, and no information about the underlying open-end credit plan, if the card issuer also discloses to the consumer that: (1) The card issuer will make an independent decision whether to issue the card; (2) the card may arrive before the decision is made on the open-end plan; and (3) approval by the card issuer does not constitute approval of the plan. The regulation does not impose additional disclosure requirements for a creditor that maintains the underlying open-end credit plan beyond providing the initial disclosures in accordance with § 226.6 of the regulation. This is the case even though the creditor offering the open-end credit plan may be considered an agent of the charge card issuer (see the Official Staff Commentary to Regulation Z, 12 CFR 226.2(a)(7)-1 (Supp. I)).

#### Paragraph (g)--Balance Computation Methods Defined

This paragraph sets forth the names and definitions of balance computation methods.

Based on comments received, the Board has identified four of the most common methods for determining the balance for purchases upon which the finance charge will be computed. In two of the four general methods identified, the Board has determined that the name of the method must be modified by a parenthetical indicating whether new purchases are included in, or excluded from, the balance. (References to "transactions" have been changed to "purchases" to more clearly indicate that the balance method disclosed is that for purchases of goods and services and not for other transactions such as cash advances.) The four methods which are to be disclosed by name pursuant to the requirements of paragraph (b)(6) are: (1) Average daily balance (including new purchases) or (excluding new purchases); (2) Two-cycle average daily balance (including new purchases) or (excluding new purchases); (3) Adjusted balance; and (4) Previous balance. In its proposal, the Board requested comment about whether a separate "retroactive" average daily balance method exists which excludes new transactions. Several commenters responded that they used such a method and it has been added as a variant of the general retroactive average daily balance method (renamed "two-cycle average daily balance" for greater precision). Another average daily balance method, frequently called "true" or "actuarial" average daily balance, has not been identified as a specific balance computation method because the Board

believes that it is the average daily balance (including new purchases) method without a grace period, and therefore may be disclosed using the name "average daily balance (including new purchases)." In addition, based on public comment, the Board has determined that the daily balance method, which takes account of the balance on each day of a billing cycle, may be disclosed as "average daily balance (including new purchases)" or "average daily balance (excluding new purchases)," as appropriate, because of the insignificant differences in the impact on a consumer's finance charge between the daily and the average daily balance methods.

The ending balance method, in contrast to the two-cycle average daily balance method, does not appear to be a common method among card issuers and has not been named. To enable any cards issuers who may use the ending balance method to describe the method concisely, however, a brief description of the ending balance method has been added as a model clause in Appendix G-1.

The descriptions of the balance computation methods disregard variations in the methods resulting from differences in the allocation of payments, in using the posting date as compared to the transaction date, the grace period, and whether the balance includes unpaid finance charges and charges such as late fees and annual fees. Such variations in the methods described do not constitute different balance computation methods.

#### Section 226.9--Subsequent Disclosure Requirements

##### Paragraph (d)--Finance Charge Imposed at Time of Transaction

Paragraph (d)(2) has been revised to add a reference to §226.5a to make it clear that under §226.5a(b)(4) a card issuer is not required to disclose transaction charges that may be imposed by a third party at the time of honoring a credit or charge card. Such charges must be disclosed by the third party under §226.9(d)(1).

##### Paragraph (e)--Disclosures Upon Renewal of Credit or Charge Card

Paragraph (e) implements the disclosure requirements for credit and charge card renewals provided in section 127(d) of the act. Paragraph (e)(1) contains the general rule on providing notice of renewal. Paragraph (e)(2) allows the notice in paragraph (e)(1) to be given at a later time if certain other disclosures are provided. The final rule differs somewhat from the proposed rule in order to further clarify the requirements for renewal notices and to ease compliance.

Paragraph (e)(1). If a card issuer imposes any annual or other periodic fee to renew a credit or charge card account (including a fee based on account activity or inactivity), the act requires the card issuer to provide cardholders with written notice of the renewal before the scheduled renewal date of the credit or charge card account. The regulation deems the "scheduled renewal date" to be the mailing or delivery date of the periodic statement on which the fee is first billed to the account. The renewal notice must be provided at least 30 days or one billing cycle before the "scheduled renewal date," whichever is less. The alternative of using a billing cycle has been added to accommodate cases where a cycle is less than 30 days.



The renewal notice must provide disclosure of the applicable items under § 226.5a(b) (1) through (7) that would apply if the account were renewed. (Card issuers need disclose only that which would be required under § 226.5a; therefore, for example, charge card issuers would only disclose the applicable items under paragraph (b) (2), (4) and (7) of § 226.5a.) Card issuers would also have to disclose how and when the cardholders may terminate continued credit availability under the account to avoid paying the renewal fee. A number of commenters pointed out the inapplicability of, or the difficulty in ascertaining, the date a card account "expires" if a renewal fee is not paid, a disclosure required by the act and the proposed rule. They pointed out that accounts typically do not expire merely because the fee is not paid by a particular date. Instead, the fee is simply added to the outstanding balance and treated the same as any other outstanding amount. In light of these comments, the statutory requirement to disclose when the account will expire if not renewed has been made part of the disclosure in paragraph (e)(1)(ii) by adding to it a disclosure of when the cardholder may terminate credit availability to avoid paying the renewal fee. (This does not require disclosure of a specific date; rather, the time period can be described.) The disclosures under this paragraph are subject to the general clear and conspicuous standard under the TILA. The tabular format requirement is not applicable (in contrast to the proposed rule). Also, as provided in footnotes 8 and 9 to § 226.5(a), the disclosures need not be in a form that the consumer may keep, and the terms "APR" and "finance charge" need not be more conspicuous than other terms. If, however, the

disclosures are provided on a periodic statement (see discussion of paragraph (e)(3) below) and are interspersed among or are part of the disclosures required by § 226.7, then the form of disclosures ordinarily applicable to § 226.7 would apply.

Paragraph (e)(2). Under paragraph (e)(2), a renewal notice may be delayed until the mailing or delivery date of the periodic statement on which the renewal fee is first billed, if the card issuer also discloses at that time that the cardholder has at least 30 days from the time the statement is mailed to avoid paying the fee, or have the fee recredited to the account, where the cardholder terminates credit availability on the account (in accordance with the instructions provided by the card issuer under paragraph (e)(1)(ii)). The card issuer would have to disclose those facts, in writing, along with a disclosure that the cardholder may use the card in the interim (that is, during the 30-day period described in paragraph (e)(2)(i)) without paying the fee.

Paragraph (e)(3). The renewal notice disclosures in paragraph (e)(1) or (e)(2) may be provided on or with a periodic statement, or in a separate mailing. If the disclosures under this paragraph are provided in whole or in part on the back of a periodic statement, the card issuer must include on the front of the statement a reference to those disclosures, for example, along the lines of "see reverse side for important information" or "upon annual renewal of your card see the reverse side for disclosures about the cost of your card and the actions you may take."

Some commenters indicated that they would like to comply with the renewal requirements by preprinting the required information on all of their periodic

statements. This approach is permissible if the card issuer follows the requirements of paragraph (e)(2) since the renewal fee will appear as a transaction on the periodic statement. If the card issuer follows the requirements of paragraph (e)(1), the periodic statement must make clear when the renewal disclosures are applicable, for example, by including a special notice at the appropriate time that the renewal fee will be billed in the following billing cycle, or by showing the renewal date as a regular entry on all periodic statements.

Section 127(d)(3) of the act permits the Board, by regulation, to provide for fewer disclosures where an account is renewable more frequently than every six months. The legislative history indicates, however, that the Board would have to require, at a minimum, the periodic fee disclosure and disclosure of any credit term that had changed since the last disclosure. The Board sought comment on whether an abbreviated disclosure scheme would be necessary or useful to cover this situation but received very little support for it. Therefore, the regulation does not contain any special rule.

#### Paragraph (f)--Change in Credit Card Account Insurance Provider

Paragraph (f) implements section 127(g) of the act. Credit card issuers that offer credit insurance (typically, life, disability, and unemployment insurance) on the outstanding balance on an account are required to make certain disclosures to their insured consumer cardholders if the card issuers change insurance providers. Only changes in providers that are initiated by the card issuer are covered by the notice requirements;

therefore, changes resulting from mergers or acquisitions of insurance companies would not trigger these disclosures. The card issuer is responsible for the disclosures, although they may be given by the insurance provider or another third party acting as the agent of the card issuer. Credit card issuers who pay for credit insurance themselves and do not separately charge the cardholder are not covered by the requirements of this paragraph. Two new model forms that may be used to comply with paragraph (f) are added to the regulation; see the discussion of Appendix G, below, for details.

Paragraph (f)(1). Paragraph (f)(1) implements section 127(g)(1) of the act which requires that a notice be sent at least 30 days before a change in insurance providers occurs. The notice may be sent on or with a periodic statement. The notice must inform the cardholder of the upcoming change in insurance providers, and indicate that the cardholder may discontinue the credit insurance. (If discontinuing the credit insurance would have some effect on the credit plan, the notice may also explain that.) In addition, if the change in insurance providers will result in an increased rate for the cardholder, or if a substantial decrease in coverage will result, the notice must disclose those items to the cardholder. The requirements apply to changes in coverage terms only and not to changes relating solely to service. The reference in the proposed rule to "other costs" in addition to rate increases and to "limitations" in addition to decreases in coverage have been deleted as unnecessary.

Paragraph (f)(2). Paragraph (f)(2) incorporates section 127(g)(2) of the act. It requires that a second notice be

provided by card issuers when the change in insurance providers actually occurs. Card issuers are required to send this notice no later than 30 days after the change. Card issuers are required to provide the name and address of the new insurance provider, and to include a statement that the cardholder has the right to discontinue the insurance. In addition, card issuers must provide a copy of the new policy or group certificate, which must contain the basic terms and conditions and the premium rate. As provided in paragraph (f)(4), this notice may be sent on or with a periodic statement. (The copy of the policy or group certificate could be sent along with the periodic statement.) Paragraph (f)(3). Paragraph (f)(3) incorporates section 127(g)(5) of the act and provides a two-part test for determining whether a decrease in the coverage terms is considered substantial. First, the card issuer must consider whether the decrease is in a significant term of coverage. A list of examples of significant terms of coverage is provided in the rule. If a significant term of coverage is involved, the card issuer then must consider, under the second part of the test, whether the decrease might reasonably be expected to affect a cardholder's decision to continue taking insurance from the card issuer; if that is the case, the decrease must be disclosed in the notice. Paragraph (f)(4). Paragraph (f)(4) allows card issuers the option of combining the notice required by paragraph (f)(2) with the notice required by paragraph (f)(1) so long as the combined notice is sent within the time limit required under paragraph (f)(1). Either or both notices may be provided on or with a periodic statement.

#### Section 226.14--Determination of Annual Percentage Rate

Paragraph (b) has been revised to add a reference to § 226.5a to make it clear that, for purposes of § 226.5a(b)(1), an APR is computed by multiplying each periodic rate by the number of periods in a year.

#### Section 226.16--Advertising

A few commenters asked for guidance on the relationship of the general advertising rules in § 226.16 to the disclosure requirements in § 226.5a. They pointed out the legislative history supporting the view that any disclosure made under § 226.5a should not be considered a "triggering" term for the other requirements of § 226.16. The final rule therefore contains a footnote to § 226.16(b) to that effect. Disclosure of any § 226.6 terms in complying with § 226.5a disclosure requirements does not trigger the disclosure requirements of § 226.16.

#### Section 226.28--Effect on State Laws

Paragraph (d) implements the new preemption provision added to section 111 of the TILA. Section 127 (c) through (f) generally preempts state credit and charge card disclosure laws. State laws relating to the terms of credit required to be disclosed or the manner in which such terms must be disclosed are preempted as to any credit or charge card application or solicitation that is subject to 127(c) and as to any renewal notice for any account that is subject to section 127(d). The preemption of such provisions of state law is total, and differs from other provisions of the TILA which generally preempt only

inconsistent state laws.

State laws relating to disclosures concerning credit and charge cards other than in applications, solicitations, or in renewal notices are not preempted. For example, a state law concerning periodic statements in general would not be preempted by the FCCCCDA. State laws relating to accounts not covered by section 127 (c) and (d) (for example, business purpose accounts) generally are not preempted; however, state laws requiring disclosures for credit or charge card applications that may be used for both consumer and business purposes are preempted where the provisions covering disclosures for consumer and nonconsumer purpose accounts are not severable. Of course, a state may reenact such a law to apply to accounts that are not subject to section 127 (c) or (d) (such as business purpose accounts).

In addition, state laws regulating the substance of transactions subject to section 127 (c) or (d) are not preempted, nor are state laws preempted that regulate the form or content of the disclosure of information that is unrelated to the scope and content of information required to be disclosed under section 127 (c) or (d). Thus, for example, the following types of state laws are not preempted: laws requiring card issuers to offer a grace period or prohibiting certain fees in credit or charge card transactions; laws such as retail installment sales acts and plain language laws, unless they regulate the disclosure of credit term information in credit and charge card applications, solicitations or renewal notices; laws requiring notice of a consumer's rights under antidiscrimination or similar laws; and laws notifying consumers about credit information available from state authorities. Finally, state laws regarding

the enforcement of the requirements of section 127 (c) or (d) or of any prohibitions against unfair and deceptive acts or practices (such as state "mini-FTC acts") also are not preempted. Section 127(g)(4) of the act contains a different preemption standard with respect to the insurance disclosures; it provides that state laws regulating insurance are not preempted by the FCCCCDA. Some commenters raised questions about the scope of this provision, some suggesting that the provision be read to mean that the Federal law does not apply at all in states that have any law on the subject, others suggesting that the Federal law was intended to apply in all states as a minimum standard. The Board's view is that under the insurance provision in section 127(g) of the act, card issuers would, in general, have to comply with the requirements of both the Federal and any state law in this area.

#### Appendix G--Open-End Model Forms and Clauses

In conjunction with the final disclosure rule, several model forms and clauses have been added to Appendix G of the regulation. Model clause G-1(e) contains a description of the ending balance method of computing the balance on which finance charges are imposed. Model form G-10(a) illustrates the permissible inclusion in the tabular format of all of the regulated disclosures for credit card applications and solicitations. In model form G-10(B), the table includes only that information required to be included in the table, while the three additional required disclosures are illustrated clearly and conspicuously outside of the table. Form G-10(A) illustrates the permissible

vertical arrangement of the disclosures, while form G-10(B) is arranged to display the information horizontally. The two forms also illustrate two different levels of detail which are permissible in disclosing the grace period. A separate model from G-10(C) has been added to illustrate a disclosure for charge card applications and solicitations and it reflects all of the required disclosures in the table.

In providing the disclosures required in tabular format, card issuers are given considerable flexibility: The disclosures may be arranged in an order different from that in the model forms; may be arranged vertically or horizontally; need not be highlighted aside from being included in the table; and are not required to be in any minimum type size. Various features from different model forms may be combined; for example, the shorter grace period disclosure in model form G-10B may be used in any disclosure. While proper use of the model forms will be deemed to comply with the regulation, card issuers are permitted to use headings and disclosures other than those in the forms if they are clear and concise and are substantially similar to the headings and disclosures contained in the model forms. (Either the heading or the disclosure about the grace period must use the term "grace period," however.) In designing forms, card issuers are permitted to eliminate inapplicable headings and their corresponding boxes. For example, if no transaction fee is imposed for purchases, the disclosure form may retain the "Transaction fee for purchases" heading and box, indicating "None" in the box, or the heading and box may be deleted from the disclosure entirely. There is, however, an exception for the grace period disclosure: even if

no grace period exists, this disclosure must be retained, stating that fact. Card issuers also may disclose more than one card program in a single table. For example, the table may include multiple columns or rows that contain the information required under § 226.5a applicable to more than one card program, such as programs that differ in the amount of certain fees, APR, or length or existence of a grace period. Furthermore, a card issuer that applies a different periodic rate for cards in different states could include additional columns or rows in the table disclosing the different rates that apply in different states.

Model clauses G-11(a), (b) and (c) are provided to illustrate the additional disclosures for applications and solicitations that are made available to the general public. Model clause G-12 illustrates the disclosures to be made when a charge card may access an open-end line of credit offered by someone other than the card issuer.

Model forms G-13 (A) and (B) relate to changes in an insurance provider. Form G-13(A) lists several significant terms of coverage that may be affected by the change in insurance provider. The card issuer may list all of these potential changes in coverage and place a check mark by the applicable changes or may include only statements about the actual change in coverage. Under either approach, the card issuer must either explain the change or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. Form G-13(A) illustrates the permissible combination of the two notices required by § 226.9(f). Form G-13(A) may be modified for use in providing only the disclosures required before the change if the card

issuer chooses to send two separate notices, Thus, for example, the references to the attached policy or certificate would not be required in a separate notice prior to a change in the insurance provider since the policy or certificate need not be provided at that time. Model form G-13(B) illustrates the disclosures required when the insurance provider is changed. Other information may be added to the disclosures made under § 226.9(f) including, for example, an explanation of the effect the consumer's cancellation of insurance would have on the consumer's credit plan.

### (3) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3245.

### List of Subjects in 12 CFR 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Truth in Lending.

### (4) Text of Revisions

Pursuant to authority granted in 15 U.S.C. 1604 and sec. 2, Pub. L. No. 100-583, 102 Stat. 2960 (to be codified at 15 U.S.C. 1637(c)(5)) of the TILA, as amended, the Board amends Regulation Z (12 CFR Part 226) as follows:

### PART 226--[AMENDED]

1. The authority citation for Part 226 is revised to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and sec. 2, Pub. L. No. 100-583, 102 Stat. 2960; sec. 1204(c), Competitive Equality Banking Act, Pub. L. No. 100-86, 101 Stat. 552.

### Subpart A--General

2. Section 226.1 is amended by revising the first sentence of paragraph (a) to read as follows:

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

(a) Authority. This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the Federal Truth in Lending Act, which is contained in Title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). \* \* \*

3. Section 226.2 is amended by revising paragraph (a)(15) and (a)(17)(iv) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) Definitions. \* \* \*

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

\* \* \* \* \*

(17) "Creditor" means: \* \* \*

(iv) For purposes of Subpart B (except for the credit and charge card disclosures

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

#### Subpart B--Open-End Credit

4. Section 226.5 is amended by revising footnotes 8 and 9, adding paragraphs (a)(3) and (b)(3) and republishing paragraph (a)(1) and (a)(2) and footnote 7 to read as follows:

#### § 226.5 General disclosure requirements.

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

(2) The terms "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.<sup>9</sup>

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

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

<sup>9</sup> The terms need not be more conspicuous when used under § 226.5a for credit and charge card applications and solicitations under § 226.7(d) on periodic statements, under § 226.9(e) in credit and charge card renewal disclosures, and under §

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

(b) Time of disclosures.

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

5. A new section 226.5a is added to read as follows:

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

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

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

(2) Form of disclosures. (i) The disclosures in paragraph (b) (1) through (7) of this section shall be provided in a prominent location on or with an application or a solicitation, or other applicable document, and in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in Appendix G. (ii) The disclosures in paragraph (b) (8) through (10) of this section shall be provided either in the table containing the disclosures in paragraph (b) (1)

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226.16 in advertisements.

through (7), or clearly and conspicuously elsewhere on or with the application or solicitation.

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

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

(3) Exceptions. This section does not apply to home equity plans accessible by a credit or charge card that are subject to the Home Equity Loan Consumer Protection Act of 1988, Pub. L. No. 100-709; overdraft lines of credit tied to asset accounts accessed by check guarantee cards or by debit cards; or lines of credit accessed by check guarantee cards or by debit cards that can be used only at automated teller machines.

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

(5) Certain fees that vary by state. If the amount of any fee referred to in paragraph (b) (8) through (10) of this section varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

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

for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraph (b) (2), (4), and (7) through (10) of this section.

(1) Annual percentage rate. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies, the range of balances to which each rate is applicable shall also be disclosed.

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

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

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

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

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

(5) Grace period. The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. If no grace period is provided, that fact must



be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average.

(6) Balance computation method. The name of the balance computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. The explanation may appear outside the table if the table contains a reference to the explanation. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

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

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

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

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

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

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

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

(i) The applicable information in paragraph (b) of this section; and  
(ii) The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card.

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

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

(i) The applicable information in paragraph (b) of this section;  
(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

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

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

the following:

- (i) The disclosures required under § 226.6 (a) through (c); and
- (ii) A statement that the consumer should contact the card issuer for any change in the required information, and a toll-free telephone number or a mailing address for that purpose.

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

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

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

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

- (1) The card issuer will make an independent decision whether to issue the card;
- (2) The charge card may arrive before the decision is made about extending credit under the open-end credit plan; and
- (3) Approval for the charge card does

not constitute approval for the open-end credit plan.

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

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

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

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

(ii) Two-cycle average daily balance (excluding new purchases). This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is

figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle and is figured in the same way as the first balance.

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

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

6. Section 226.9 is amended by revising paragraph (d)(2) and adding paragraphs (e) and (f) to read as follows:

§ 226.9 Subsequent disclosure requirements.

(d) Finance charge imposed at time of transaction.

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

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

initially charged to the account. The notice shall contain the following information:

(i) The disclosures contained in § 226.5a(b) (1) through (7) that would apply if the account were renewed;<sup>20a</sup> and (ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee.

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

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

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

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

(f) Change in credit card account insurance provided--(1) Notice prior to change. If a credit card issuer plans to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account subject to § 226.5a,

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<sup>20a</sup> These disclosures need not be provided in tabular format or in a prominent location.

the card issuer shall mail or deliver the cardholder written notice of the change not less than 30 days before the change in providers occurs. The notice shall also include the following items, to the extent applicable:

- (i) Any increase in the rate that will result from the change;
- (ii) Any substantial decrease in coverage that will result from the change; and
- (iii) A statement that the cardholder may discontinue the insurance.

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

- (i) The name and address of the new insurance provider;
- (ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the rate to be charged; and
- (iii) A statement that the cardholder may discontinue the insurance.

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

- (i) Type of coverage provided;
- (ii) Age at which coverage terminates or becomes more restrictive;
- (iii) Maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;
- (iv) Eligibility requirements and number and identity of persons covered;

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

(vi) Exclusions from or limitations on coverage; and

(vii) Waiting periods and whether coverage is retroactive.

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

7. Section 226.14 is amended by revising paragraph (b) to read as follows:

§ 226.14 Determination of annual percentage rate.

(b) Annual percentage rate for § 226.5a disclosures, for initial disclosures and for advertising purposes. Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of § 226.5a, 226.6(a)(2) and 226.16(b) shall be computed by multiplying each periodic rate by the number of periods in a year.

8. Section 226.16 is amended by adding footnote 36a to paragraph (b) to read as follows (paragraph (b) introductory text is republished):

§ 226.16 Advertising.

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

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<sup>36a</sup> The disclosures given in accordance with § 226.5a do not constitute advertising terms for

## Subpart D--Miscellaneous

9. Section 226.28 is amended by revising the first sentence of paragraph (a)(1) and adding paragraph (d) to read as follows:

§ 226.28 Effect on state laws.

(a) Inconsistent disclosure requirements.

(1) Except as provided in paragraph (d) of this section, state law requirements that are inconsistent with the requirements contained in chapter 1 (General Provisions), chapter 2 (Credit Transactions), or chapter 3 (Credit Advertising) of the act and the implementing provisions of this regulation are preempted to the extent of the consistency

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

10. Appendix G is amended by adding to the introductory language and by adding model forms and clauses G-1(e) and G-10(A) through G-13(B) to read as follows (G-1(a) through (d) and G-2 are republished):

## Appendix G--Open-End Model Forms

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purposes of the requirements of this section.

## and Clauses

G-10(a)-(B) Applications and Solicitations Model Forms (Credit Cards) (§ 226.5a(b))

G-10(C) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))

G-11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))

G-12 Charge Card Model Clause (When Access to Plan Offered by Another) (§ 226.5a(f))

G-13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))

G-13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))

By order of the Board of Governors of the Federal Reserve System, April 3, 1989.

William W. Wiles,

Secretary of the Board.