PROPOSED RULES

FEDERAL RESERVE SYSTEM

12 CFR Part 226

Reg. Z; TIL-1
FR Doc. 89-27270
Filed 11-21-89

Truth in Lending; Proposed Update to Offical Staff Commentary

Wednesday, November 22, 1989

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed offical staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the offical staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations. The majority of the proposed revisions address the amendments to Regulation Z issued in April 1989 to implement the Fair Credit and Charge Card Disclosure Act of 1988 and the amendments to the regulation issued in June 1989 to implement the Home Equity Loan Consumer Protection Act of 1988. The proposal incorporates much of the guidance provided when those regulatory changes were adopted and addresses additional questions that have been raised about application of the new requirements. The other proposals deal with other provisions of Regulation Z, including the rules on substitution of telephone credit cards.

DATES: Comments must be received on or before January 19, 1990.

ADDRESSES: Comments should refer to Docket No. TIL-1 and be sent to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B-1122 of the Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT:The following attorneys in the Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412:

Fair Credit and Charge Card Disclosure Act issues: Jane Ahrens, Michael Bylsma, Adrienne Hurt

Home Equity Loan Consumer Protection Act issues: Sharon Bowman, Leonard Chanin, Thomas Noto, John Wood

Other open-end credit issues: Jane Ahrens, Adrienne Hurt, John Wood

Closed-end credit issues: Michael Bylsma, Kurt Schumacher, Mary Jane Seebach

For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea

Thompson, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:
(1) General. The Truth in Lending Act (15 U.S.C. 1601 et seq.) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR part 226). Effective October 13, 1981, an official staff commentary (TIL-1, Supp. I to 12 CFR part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise. There have been eight general updates and one limited update so far. This notice contains the proposed ninth general update. It is expected that it will be adopted in final form in March 1990 with optional compliance until the uniform effective date of October 1, 1990, for mandatory compliance.
(2) Proposed revisions. Within the last year the Board adopted two major sets of amendments to Regulation Z. The first of these were amendments published in the Federal Register on April 6, 1989 (54 FR 13855) to implement the Fair Credit and Charge Card Disclosure Act of 1988, Public Law No. 100-583, 102 Stat. 2960 (FCCCDA). (The Board also adopted technical amendments to Regulation Z, in further implementation of FCCCDA, published on August 11, 1989, 54 FR 32953.) The mandatory effective date for the major portion of FCCCDA was August 31, 1989, with the effective date for certain provisions delayed until November 29, 1989.
The second major set of amendments to Regulation Z comprised amendments published in the Federal Register on June 9, 1989 (54 FR 24670) to implement the Home Equity Loan Consumer Protection Act of 1988, Public Law No. 100- 709, 102 Stat. 4725 (HELCPA). (See also the correction notice published on July 7, 1989, 54 FR 28665.) The mandatory effective date of HELCPA was November 7, 1989.
The Federal Register notices containing the regulatory amendments implementing FCCCDA and HELCPA set forth a large amount of supplementary material interpreting the new regulations. In order to provide ongoing guidance, the proposed commentary revisions in this notice reflects, in large measure, that supplementary material. On some points the proposed commentary differs from the material published earlier this year; significant differences are noted below. The proposed commentary also addresses a number of issues that have arisen since the publication of the regulations.
In addition to the issues arising with regard to FCCCDA and HELCPA, additional revisions are proposed concerning other provisions of Regulation Z. For example, the proposed commentary revisions discusses tax refund anticipation loans; a possible new mortgage product, the price-level adjusted mortgage; and open-end credit advertising.
The text of all of the proposed revisions is presented below in the order in which it would appear in the commentary. To facilitate review and comment, however, the descriptions of the revisions are presented separately for the FCCCDA, the HELCPA, and the other provisions.

Fair Credit and Charge Card Disclosure Act Provisions

As mentioned above, the proposed commentary to the regulation incorporates much of the supplementary information that accompanied the final amendments when they were published in April 1989. Some new or revised material is included, however, as noted below.

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

Comment 5a(b)(1)-6 would be added to state that premium initial rates would be required to be disclosed, although the rate that is otherwise applicable also may be disclosed. This interpretation differs from the disclosure required for a discounted initial rate, for which the otherwise applicable rate must be shown.
Comment 5a(b)(5)-1 would be added to state that a card issuer may, but need not, refer to the beginning and ending point and briefly state any applicable conditions for any grace period.

5a(c) Direct Mail Applications and Solicitations

Comment 5a(c)-1 discusses in detail the distinctions between applications and solicitations subject to the direct mail rule and those subject to the "take-one" rules.

5a(e) Applications and Solicitations Made Available to General Public

Comment 5a(e)(2)-1 would explain the general rule that the credit information provided to a consumer under this disclosure option must be current as of the time it is mailed or delivered to the general public. Comment 5a(e)(2)-2 would permit a card issuer to provide information that was current as of the time it was printed if the issuer also complies with § 226.5a(e)(1)(ii)--that is, states the date the required information was printed, including a statement that it was accurate as of that date and is subject to change thereafter.
Comment 5a(e)(3)-1 would prohibit card issuers from using this disclosure option if any kind of reference is made to a term or condition of credit required to be disclosed under § 226.5a(b) including statements such as "favorable rates" and "low costs."

5a(g) Balance Computation Methods Defined

Comment 5a(g)-2 would be added to discuss the applicability of the "two-cycle average daily balance" method. The interpretation incorporates a discussion of the technical clarification to the regulation about this method which was published on August 11, 1989 (54 FR 32953).

Section 226.9 Subsequent Disclosure Requirements

9(e) Disclosures Upon Renewal of Credit or Charge Card

Comments would address the renewal notices for credit and charge card accounts in which an annual fee is imposed. Using employee preferential rates as an example, comment 9(e)-3 would explain that renewal notices should state the terms actually imposed on the account.
Comment 9(e)-4 would clarify how a card issuer discloses a variable rate when the rate that will be in effect if the cardholder renews the account cannot be

determined at the time the renewal notice is sent. Comment 9(e)-5 discusses disclosure alternatives for card issuers that bill renewal fees more often than annually.

Comment 9(e)(1)-1 discusses how issuers may comply with the requirement that cardholders who receive an advance notice must be given the lesser of 30 days or 1 full billing cycle both to make a decision about the renewal of the account and to use the card without having the fee billed to the account.

Section 226.28 Effect on State Laws

28(d) Special Rule for Credit and Charge Cards

Comments 28(d)-1 through 28(d)-3 would be added to provide guidance on the scope of preemption of state laws under the Fair Credit and Charge Card Disclosure Act. The comments discuss the field of preemption, explaining that it extends to any state law requiring disclosure of credit information in open-end consumer credit or charge card applications, solicitations, or renewal notices. To address the issue of state laws that apply to both consumer-and business-purpose credit cards, comment 28(d)-2 would provide that such laws would be preempted to the extent they apply to applications and solicitations for, and renewals of, open-end consumer credit and charge card accounts. What effect preemption as to consumer-purpose cards would have on the state law as it relates to business-purpose cards is a matter that would be determined under state law.

Home Equity Loan Consumer Protection Act Provisions

Much of the information in the proposed commentary was contained in the supplementary information to the final rule. Although much of the proposal is self-explanatory, several provisions have been highlighted below which given additional guidance. The rules for home equity lines differ from those set forth in several existing commentary sections. Accordingly, the proposed commentary would add several cross references to the new home equity provisions where it was thought that confusion might result.

Section 226.5b Requirements for Home Equity Plans

5b(a) Form of Disclosures

Section 226.5b(a) requires most of the disclosures to be grouped together and "segregated" from unrelated information. Greater flexibility is permitted in complying with the segregation standard than currently exists for closed-end credit. The commentary would provide examples of the type of additional information that would be permitted with the required disclosures, and would discuss alternative methods for providing the early disclosures.

5b(b) Time Disclosures

The commentary would offer guidance on when the disclosures are required in the case of general purpose applications, applications sent through the mail or made available to the public without need for a request (such as "take-ones"). It would address the case where creditors provide a response card instead of an application in solicitation materials sent to consumers; in such cases creditors need not provide the home equity disclosures and brochure with the response card if the only action taken by the creditor upon receiving the card is to send an application to the consumer (which would then be accompanied by the disclosures and a brochure), or to telephone the consumer regarding an application. The commentary would also discuss the action that may be taken in cases where an application is denied or withdrawn within a certain time period.

5b(c) Duties of Third Parties

In addition to requiring creditors to provide disclosures and a brochure to consumers at an earlier time, § 226.5b(c) of the regulation imposes a limited duty on third parties who provide applications to consumers. The commentary would discuss the duty of both third parties and creditors in such cases.

5b(d) Content of Disclosures

Section 226.5b(d) of the regulation lists the information to be given to consumers when they receive an application for home equity plans. The commentary would provide examples of how to disclose the payment information required under § 226.5b(d)(5) for reverse mortgages. In addition, more guidance would be offered on the types of fees that must be disclosed under § 226.5b(d)(7) and (8). The commentary would provide examples of the type of fees that need not be disclosed. The commentary would clarify that third party fees that must be disclosed include premiums for property insurance if such fees are required to open a plan. It states that creditors must provide a good faith estimate of such third party fees, and may provide a range or state the fees on the basis of a typical or representative credit line.

Creditors who offer variable-rate transactions must provide information about the variable-rate feature under § 226.5b(d)(12). Many of these disclosures are similar to those required under §226.19(b) for closed-end adjustable rate mortgages. The commentary would offer additional guidance on how to provide the maximum payment example required under § 226.5b(d)(12)(x), explaining that creditors should ignore any discounted or premium initial rates or periodic rate limitations for purposes of stating the payment amount. The commentary also would discuss the requirement that creditors disclose the time by which the maximum rate would be imposed. In making this disclosure, creditors would assume that the rate increases as rapidly as possible under the plan, and should factor in any discounted or premium initial rates or periodic rate limitations. Separate examples would be provided for the draw and any repayment phase and, in disclosing the time at which the maximum rate could be reached, creditors would assume the index and margin shown in the last year of the historical example (or a more recent rate) is in effect at the beginning of each phase.

Additional guidance regarding the historical example required under § 226.5b(d)(12)(xi) also is provided. The commentary would clarify that creditors should assume that the $10,000 balance upon which the disclosures are based is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan, and that the consumer takes no subsequent draws. Creditors would not assume that an additional advance is taken at any time, including the beginning of any repayment period. In stating the payment information that must be provided in the historical example, the commentary also would clarify that, while calculations of payments should be based on the creditor's actual payment computation formula, the creditor may assume that all months have an equal number of days. The commentary would make clear that, in setting forth the margin, a creditor must select for each index a representative margin in preparing the historical example. Thus, the margin used must be one that was used in conjunction with the specific index.

5b(f) Limitations on Home Equity Plans

Section 226.5b(f) imposes substantive limitations on home equity plans. Specifically, it indicates how rate changes may be implemented, when a creditor may terminate a line and accelerate payment of the outstanding balance, and when the original terms may be changed.

The commentary to § 226.5b(f)(2) would provide guidance regarding the ability of creditors to terminate and accelerate a home equity plan. Comment 5b(f)(2)(ii)-1 would be added to clarify what constitutes failure to meet repayment terms for purposes of termination and acceleration. Under the proposed comment, a creditor would be permitted to terminate and accelerate the balance on a home equity line if the consumer has not made a payment within 60 days of the due date. A failure to make payments also would be deemed to occur if the consumer is in default for failing to make a required payment and does not make the payment within 30 days after the creditor provides the consumer with a written notice of the missed payment and of the consequences of continued failure to pay. This comment would parallel the approach taken by several states (as well as regulations promulgated by the Federal Home Loan Bank Board dealing with certain home loans) which specify that a creditor must provide consumers with a right to cure before a creditor may accelerate payment of the balance of a debt or take other action. This provision would not override any state or other law that requires a right to cure notice, or any longer time period required by such state law.

The commentary to § 226.5b(f)(3) would be added to provide guidance on when certain changes can be made to a home equity agreement. For example, comment 5b(f)(3)-2 would provide that a creditor may pass on increases in real estate taxes, and charges for property and credit insurance imposed by third parties notwithstanding the general prohibition on changing the terms of a home equity agreement.

Comments 5b(f)(3)(vi)-1 through -10 would provide general guidance regarding a creditor's ability to suspend credit privileges and reduce the credit limit on a home equity line. Comment 5b(f)(3)(vi)-3 would clarify that charges incurred by a creditor for credit reports and appraisals to determine whether a condition justifying a freeze or reduction in the credit limit continues to exist may be passed on to the consumer. Material has been included in comment 5b(f)(3)(vi)-8 to provide examples of events that could constitute a default of a material obligation.

5b(g) Refund of Fees

Proposed comments 5b(g)-1 through -4 provide guidance on the requirement that creditors refund fees to consumers if the terms originally disclosed change after the disclosures are provided.

5b(h) Imposition of Nonrefundable Fees

Proposed comment 5b(h)-1 provides that an application fee or membership fee may be collected prior to the consumer receiving the disclosures (for example, when an application contained in a magazine is mailed in with an application fee) only if such fees remain refundable for three days after the consumer receives the § 226.5b disclosures. This would parallel the approach taken in comment 5(b)(1)-1 for open-end plans other than home equity plans.
Proposed comment 5b(h)-2 provides that a fee may be collected after the disclosures and brochure are received by the consumer but that the fee must be refunded if, within three days of receiving the required information, the consumer decides not to enter into the agreement. The consumer in such a case must be notified that the fee is refundable for three days.

Section 226.6 Initial Disclosure Statement

Proposed comments 6(e)-1 through -4 clarify the requirement that additional disclosures be provided, with the disclosures required under § 226.6, for home equity lines of credit.

Section 226.9 Subsequent Disclosure Requirements

Comment 9(c)-1 would be revised to include a reference to the limitations on changes in terms for home equity lines of credit. Proposed comment 9(c)(1)-6 would be added to clarify that a change in terms notice is required if a creditor renews a home equity line on terms other than those agreed to originally. Comment 9(c)(3)-1 would be added to clarify that a creditor need not provide a notice if it freezes a line in circumstances that would permit it to terminate and accelerate.

Section 226.15 Right of Rescission

15(a) Consumer's Right to Rescind

Comment 15(a)(3)-2 would be revised to provide that the payment terms described in § 226.6(e)(2) for any repayment phase set forth in an initial agreement are "material disclosures" for purposes of rescission. However, neither the payment terms nor any other information given with the application disclosures would be a material disclosure for purposes of rescission. Comment 15(a)(3)-3 would be modified to provide that the variable-rate information provided in footnote 12 to § 226.6(a)(2) for variable-rate repayment phases set forth in an initial agreement is a material disclosure. Therefore, the circumstances under which the rate may increase; any limitations on the increase; and the effects of an increase for a variable rate feature for both the draw and repayment phase would be material disclosures for purposes of rescission.

Section 226.16 Advertising

Comment 16(b)-2 would be revised to include a reference to the special advertising rules for home equity plans. Comments 16(d)-1 through -6 would be added to clarify these rules. Comment 16(d)-2 would clarify that the rules in § 226.5b applicable to disclosing required information, including third party fees to open a line, may be relied upon in stating the information in advertisements.

Section 226.30 Limitations on Rates

Comments 30-1 and 30-11 would be revised to clarify how the home equity rules affect the requirements of § 226.30. The revisions would make clear that some types of loans may not be entered into after November 7, 1989. For example, comment 30-1 would be revised to clarify that because the home equity rules prohibit creditors from reserving a contract right to increase the rate in a fixed-rate open-end home equity plan, only such loans entered into before November 7, 1989, would be subject to a rate ceiling.

Other Provisions of Regulation Z

Section 226.12 Special Credit Card Provisions

Comment 12(a)(2)-9 would provide guidance to multiple entities that share responsibility for a card, such as where a single card has been issued by a long-distance telephone company but both that company and a local telephone company participate in matters such as authorization and billing. The proposed commentary would restrict either entity from issuing an additional credit card unless the existing card is terminated, so that, for example, the local company could not issue a new card of its own without ensuring that the original card is terminated. Comments are specifically requested, however, on a less restrictive approach, such as permitting an additional credit card on the same account to be issued by any one of the entities, provided the cardholder's total liability for unauthorized use of the original and the additional card cannot exceed the liability limit set forth in § 226.12(b).

Section 226.16 Advertising

Comment 16(b)-7 would be revised to give further guidance on terms that trigger additional disclosures. For example, the comment explains that the phrase "small monthly service charge on the remaining balance" triggers additional disclosures because the statement discloses how the amount of the finance charge will be determined, not because the statement uses the term "small" in describing that a monthly service charge will be assessed. An additional example would be added to illustrate that a statement in an advertisement that no finance charge will be imposed for some limited period of time triggers additional disclosures because it refers to a period during which credit can be repaid without a finance charge.

Section 226.17 General Disclosure Requirements

17(c) Basis of Disclosures and Use of Estimates

Comment 17(c)(1)-11 would be revised to include "price level adjusted mortgages" (PLAMs) as an example of variable-rate transactions. (References to PLAMs would be added to the commentary to §§ 226.19 and 226.30 noting that certain provisions would be inapplicable.) PLAMs have a fixed rate of interest but provide for periodic adjustments to payments and loan balance to reflect changes in an index measuring prices or inflation. The comment would apply to transactions

that have been authorized to be insured by the Department of Housing and Urban Development (HUD) in a demonstration program. HUD's regulations for PLAMs have not yet been adopted, but rules are expected to be issued before the Regulation Z commentary revisions become final in the spring of 1990.
Comment 17(c)(1)-17 would be added to provide guidance on the basis for disclosures for income tax refund anticipation loans (RALs). RALs are loans made on the basis of a consumer's anticipated tax refund. Repayment of RALs is typically made by an offset to a consumer's account, into which the consumer's tax refund has been deposited by electronic transfer. The comment provides that if repayment of the loan is required at the time the refund is deposited into the consumer's account, this date must be estimated and used in the disclosures even if the loan contains a demand clause.

Section 226.19 Certain Residential Mortgage Transactions

Comment 19(b)-3 would be added to clarify what constitutes an "intermediary agent or broker." The new comment would make clear that a legal agent of the creditor (as determined by applicable state or other law) is not an intermediary agent. The comment would also provide several factors to be considered by the creditor when determining whether or not the transaction involves an intermediary agent. Such factors would include the percentage of applications received by a creditor from a particular broker and the amount of time and preparation the broker puts into an application.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in lending.
Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.
(3) Text of proposed revisions. Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend the official staff commentary to Regulation Z (12 CFR part 226 Supp. I) as follows:

PART 226 [AMENDED]

1. The authority citation for part 226 continues to read:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and sec. 2, Public Law 100-583, 102 Stat. 2960; sec. 1204(c), Competitive Equality Banking Act, Public Law 100-86, 101 Stat. 552.

Subpart A--General

Section 226.2--Definitions and Rules of Construction

2. Comment 2(a)(15)-3 would be added to read as follows:
2(a) Definitions
2(a)(15) "Credit card"

3. Charge card. Generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. Under the

regulation, a reference to credit cards generally includes charge cards. The term "charge care" is, however, distinguished from "credit card" in §§ 226.5a, 226.0(e), 226.9(f) and 226.28(d), and appendices G-10 through G-13. When the term "credit card" is used in those provisions, it refers to credit cards other than charge cards.

3. Comment 2(a)(2)-5 would be amended by adding parenthetical material before the last sentence of the introductory paragraph to read as follows:

2(a)(20) Open-end credit

5. Reusable line. (The rules in § 226.5b(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.)

4. Comment 2(a)(24)-6 would be added to read as follows:

2(a)(24) "Residential Mortgage Transaction".

6. Multiple purpose transactions. If a transaction meets the definition of this section, it is a residential mortgage transaction even if only a portion of the loan proceeds will be used to finance the acquisition of initial construction of the consumer's principal dwelling. For example, a transaction to finance the initial construction of the consumer's principal dwelling is a residental mortgage transaction even if a portion of the funds will be disbursed directly to the consumer or used to satisfy a loan for the purchasr of the land on which the dwelling will be built.

Subpart B--Open-End Credit

Section 226.5--General Disclosure Requirements

5. Comment 5(b)(1) would be amended by adding two sentences after the second sentence to read as follows:

5(b) Time of disclosures.

Paragraph 5(b)(1) Initial disclosure.

1. Disclosures before the first transaction. The prohibition on the payment of fees other than application or refundable membership fees before initial disclosures are provided does not apply to home equity plans subject to § 226.5b. See the commentary to § 226.5b(h) regarding the collection of fees for home equity plans covered by § 226.5b.

6. Comments 5a(a)(2)-1 through 5a(g)-2 and headings would be added to read as follows:

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

5a(a) General rules

5a(a)(2) Form of disclosures.

1. Prominent location. Certain of the required disclosures provided on or with an application or solicitation must be prominently located--that is, readily noticeable to the consumer. There are, however, no requirements that the disclosures be in any particular location or in any particular type size or typeface.

2. Multiple accounts or varying terms. Where a tabular format is required to be used, card issuers offering several types of accounts may disclose the various terms for the accounts in a single table or may provide a separate table for each account. Similarly, 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 in separate tables.

3. Additional information. In general, the

table containing the disclosures required by § 226.5a should contain only the information required or permitted by this section. Additional information may, however, be presented on or with an application or solicitation outside the required table.
4. Location of certain disclosures. A card issuer has the option of disclosing some of the fees in § 226.5a(b)(8) through (10) in the required table and some outside the table.
5. Terminology. In general, § 226.5a(a)(2)(iv) requires that the terminology used for the disclosures specified in §226.5a(b) be consistent with the used in the disclosures under § § 226.6 and 226.7. This standard requires that the § 226.5a(b) disclosures be closed in meaning to those under § § 226.6 and 226.7, but not necessarily identical. In addition, § 226.5a(a)(2)(i) requires that the headings, content, and format of the tabular disclosures be substantially similar, but not necessarily identical, to the tables in appendix G.A special rule applies to the grace period disclosure, however: the term "grace period" must be used, either in the heading or in the text of the disclosure.
6. Deletion of inapplicable disclosures. Generally, disclosures need only be given as applicable. Card issuers may, therefore, delete inapplicable headings and their corresponding boxes in the table. For example, if no transaction fee is imposed for purchases, the disclosure form may contain the "Transaction fee for purchases" heading and box, showing "none" in the box, or the heading and box may be deleted from the table. There is an exception for the grace period disclosure, however: Even if no grace period exists, that fact must be stated.
5a(a)(3) Exceptions.
1. Coverage. Certain exceptions to the coverage of § 226.5a are stated in § 226.5a(a)(3); in addition, the requirements of § 226.5a do not apply to the following:
- Lines of credit accessed solely by account numbers
- Addition of a credit or charge card to an existing open-end plan
2. Noncoverage of "consumer initiate" requests. Applications provided to a consumer upon request are not covered by § 226.5a, even if the request is made in response to the card issuer's invitation to apply for a card account. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application. the application subsequently sent to the consumer need not contain the disclosures required under § 226.5a. Similary, if the card issuer invites consumers to call and make an oral application on the telephone, § 226.5a does not apply to the application made by the consumer. If, however, the card issuer calls a consumer or initiates a telephone discussion with a consumer about opening a card account and contemporaneously takes an oral application, such applications are subject to § 226.5a, specifically § 226.5a(d).
3. General purpose applications. The requirements of this section do not apply to general purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account.
5a(a)(5) Certain fees that vary by State.
1. Method of disclosing range. If the card issuer discloses a range of fees instead of disclosing the amount of the fee imposed in each state, the range may be stated as zero (for states where no fee applies) to the amount of the highest

authorized fee.
5a(b) Required disclosures.
5a(b)(1) Annual percentage rate.
1. Periodic rate. The periodic rate, expressed as such, may be disclosed in addition to the required disclosure of the corresponding annual percentage rate.
2. Variable-rate accounts--definition. For purposes of § 226.5a(b)(1), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the comentary to § 226.6(a)(2) for examples of variable-rate plans.)
3. Variable-rate accounts--rates in effect. For variable-rate disclosures in direct mail applications and solicitations subject to § 226.5a(c), and in applications and solicitations made available to the general public subject to § 226.5a(e), the rules concerning accuracy of the annual percentage rate are stated in § 226.5a(b)(1)(ii). For variable-rate disclosures for telephone applications and solicitations subject to § 226.5a(d), the card issuer must use the rate in effect at the time the disclosures are provided. For oral disclosures under § 226.5a(d)(1), this requires providing the annual percentage rate currently in effect. For the alternate disclosures under § 226.5a(d)(2), this requires providing the annual percentage rate in effect at the time the disclosures are mailed or delivered.
4. Variable-rate accounts--other disclosures. In describing how the applicable rate will be determined, the card issuer may identify the index or formula and disclose any margin or spread added to the index or formula in setting the rate. The card issuer may disclose the margin or spread as a range of the highest and lowest margins that may be applicable to the account. A disclosure of any applicable limitations on rate increases or decreases may also be included.
5. Introductory rates--discounted rates. If the initial rate is a temporary rate and is lower than the rate that will apply after the temporary rate expires, the card issuer must disclose the annual percentage rate that would otherwise apply to the account. In a fixed-rate account, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the index or formula applicable to the account in accordance with comment 5a(b)(1)-2. An initial discounted rate may be provided along with the rate required to be disclosed if the card issuer also discloses the time period during which the introductory rate will remain in effect.
6. Introductory rates--premium rates. If the initial rate is temporary and is higher than the permanently applicable rate, the card issuer must disclose the initial rate. The issuer also may disclose the rate that would otherwise apply if the issuer also discloses the time period during which the initial rate will remain in effect.
5a(b)(2) Fees for issuance or availability.
1. Membership fees. Membership fees for opening an account must be disclosed under this paragraph. A membership fee to join an organization that provides a credit or charge card as a privilege of membership must be disclosed only if the card is issued automatically upon membership. Such a fee need not be disclosed if membership results merely in eligibility to apply for an account.
2. Enhancements. Fees for optional services addition to basic membership privileges in a credit or charge card account (for example, travel insurance or

card registration services) need not be disclosed under this paragraph if the basic account may be opened without paying such fees.
3. One-time fees. Disclosure of non-periodic fees is limited to fees related to opening the account, such as one-time membership fees. Therefore, the following need not be disclosed:
- Fees for reissuing a lost or stolen card
- Statement reproduction fees
- Application fees described in § 226.4(c)(1)
4. Waived or reduced fees. If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be provided in addition to the required fees if the card issuer also discloses how long the fees or waivers will remain in effect.
5. Fees stated as annual amount. Fees imposed periodically must be stated as an annual total. For example, if a fee is imposed quarterly, the disclosures would state the total amount of the fees for one year. (See, however, the commentary to § 226.9(e) with regard to disclosure of such fees in renewal notices.)
5a(b)(4) Transaction charges.
1. Charges imposed by person other than card issuer. Charges imposed by a third party, such as a seller of goods, would not be disclosed under this section; the third party would be responsible for disclosing the charge under § 226.9(d)(1).
4a(b)(5) Grace period.
1. How disclosure is made. The card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read "30 days" or "30 days from the date of the periodiic statement (provided you have paid your previous balance in full by the due date)."
5a(b)(6) Balance computation method.
1. Form of disclosure. In cases where the card issuer uses a balance computation method that is not identified by name in the regulation, the disclosure should clearly explain the method in as much detail as set forth in the descriptions of balance methods in § 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.6(a)(3). (See the commentary to § 226.5a(g) for guidance on particular methods.)
2. Determining the method. In determining the appropriate balance computation method for purchases for disclosure purposes, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method will include new purchases or cover two billing cycles only if purchase balances are not paid within the grace period, the card issuer would disclose the name of the average daily balance method but includes new purchases or covers two billing cycles, respectively. The card issuer should not assume the existence of purchase balance, however, in making other disclosures under § 226.5a(b).
5a(b)(7) Statement on charge card payments.
1. Applicability and content. The disclosure that charges are payable upon receipt of the periodic statement is applicable only to charge card accounts. In making this disclosure, the card issuer may make such modifications as necessary to more accurately reflect the circumstances of repayment under the account. For example, the disclosure might read, "Charges are due and payable upon receipt of the periodic

statement and must be paid no later than 15 days after receipt of such statement."

5a(b)(8) Cash advance fee.

1. Applicability. The card issuer must disclose only those fees for a cash advance on a credit or charge card account that are finance charges under § 226.4. For example, a charge for a cash advance at an automated teller machine (ATM) would be disclosed under § 226.5a(b)(8) if no charge is imposed for ATM transactions not involving an extension of credit. (See comment 4(a)-5 for a description of such a fee.)

5a(b)(9) Late payment fee.

1. Applicability. The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (See the commentary to § 226.4(c)(2) for additional guidance on late payment fees.)

5a(b)(10) Over-the-limit fee.

1. Applicability. The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded.

5a(c) Direct mail applications and solicitations.

1. Coverage. Applications and solicitations contained in catalogs, magazines, or other generally available publications mailed to consumers are subject to the requirements applicable to "take-ones" in § 226.5a(e), rather than the direct mail requirements of § 226.5a(c). A publication mailed to a limited list of addresses, however (for example, a catalog targeted to certain types of consumers based on prescreening), is not a "generally available" publication and therefore is subject to the direct mail rules. In addition, if a card issuer has a single application form that is sometimes used as a "take-one" (in racks in public locations, for example) and at other times mailed to consumers, the form is subject to § 226.5a(c) when sent by direct mail and to § 226.5a(e) when placed in public locations.

2. Accuracy. In general, disclosures in direct mail applications and solicitations must be accurate as of the time of mailing. See § 226.5a(b)(1)(ii), however, for special rules concerning the accuracy of the annual percentage rate disclosure on a variable-rate account.

5a(d) Telephone applications and solicitations.

1. Coverage. This paragraph applies if:

- A telephone conversation between a card issuer and consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a "preapproved" telephone solicitation).
- The card issuer initiates the contact and at the same time takes application information over the telephone.

This paragraph does not apply to:

- Telephone applications initiated by the consumer.
- Situations where no card will be issued--because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides either during the telephone conversation or later not to issue the card.

5a(e) Applications and solicitations made available to general public.

1. Coverage. Applications and solicitations made available to the general public include what are commonly referred to as "take-one"

applications typically found at counters in banks and retail establishments, as well as applications contained in catalogs, magazines and other generally available publications. In the case of credit unions, this paragraph applies to applications and solicitations to open card accounts made available to those in the general field of membership.
2. Cross-selling. If a card issuer invites a consumer to apply for a credit or charge card (for example, where the issuer engages in cross-selling), an application provided to the consumer at the consumer's request is not considered an application made available to the general public and therefore is not subject to § 226.5a(e). For example, the following are not covered.
- A consumer applies in person for a card loan at a financial institution and the loan officer invites the consumer to apply for a credit or charge card account; the consumer accepts the invitation.
- An employee of a retail establishment, in the course of processing a sales transaction using a bank credit card, asks a customer if he or she would like to apply for the retailer's credit or charge card; the customer responds affirmatively.
3. Toll-free telephone number. If a card issuer, in complying with any of the disclosure options of § 226.5a(e), provides a telephone number for consumers to call to obtain credit information, the number must be toll-free for nonlocal calls made from an area code other than the one used in the card issuer's dialing area. Alternatively, a card issuer may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.
5a(e)(1) Disclosure of required credit information.
1. Date of printing. Disclosure of the month and year fulfills the requirements to disclose the date an application was printed.
2. Form of disclosures. The disclosures specified in § 226.5a(e) (i), (ii) and (iii) may appear either in or outside the table containing the required credit disclosures.
5a(e)(2) Inclusion of certain initial disclosures.
1. Accuracy of disclosures. The disclosures required by § 226.5a(e)(2) generally must be current as of the time they are made available to the public. Disclosures are considered to be made available at the time they are placed in public locations (in the case of "take-ones") or mailed to consumers (in the case of publications).
2. Accuracy--exception. If a card issuer discloses all the information required by § 226.5a(e)(1)(ii) on the application or solicitation, the disclosures under § 226.5a(e)(2) need only be current as of the date of printing.
3. Combining disclosures. Disclosure of the information required under this paragraph does not satisfy the initial disclosure requirements in § 226.6 of the regulation. If, however, the card issuer in complying with this paragraph provides all the applicable disclosures required under § 226.6, in a form that the consumer may keep and in accordance with the other requirements for that section, the issuer will have satisfied the initial disclosure requirements under § 226.6 as well as the disclosure requirements for § 226.5a(e)(2).
5a(e)(3) No disclosure of credit information.
1. When disclosure option available. A card issuer may use this option only if the issuer does not include on or with the application or solicitation any statement

that refers to the credit disclosures required by § 226.5a(b). Statements such as "no annual fee," "low interest rate," "favorable rates," and "low costs" are deemed to refer to the required credit disclosures and, therefore, may not be included on or with the solicitation or applications, if the card issuer chooses to use this option.

5a(e)(4) Prompt response to requests for information.

1. Prompt disclosure. Information is promptly disclosed if it is given within 30 days of a consumer's request for information but in no event later than delivery of the credit or charge card.

2. Information disclosed. When a consumer requests credit information, card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with § 226.5a(e)(1) or (2), and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the issuer need only provide the items of information that have changed from those previously disclosed on or with the application or solicitation. If a consumer requests information about particular items, the card issuer need only provide the requested information. If, however, the card issuer has made disclosures in accordance with the option in § 226.5a(e)(3), and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information must be given.

3. Manner of response. A card issuer's response to a consumer's request for credit information may be provided orally or in writing, regardless of the manner in which the consumer's request is received by the issuer. Furthermore, the card issuer may provide the information listed in either § 226.5a(e)(1) or (2). Information provided in writing need be in a tabular format.

5a(f) Special charge card rule--Card issuer and person extending credit not the same person.

1. Duties of charge card issuer. Although the charge card issuer is not required to disclose information about the underlying open-end credit plan if the card issuer meets the conditions set forth in § 226.5a(f), the card issuer must disclose the information relating to the charge card plan itself.

2. Duties of creditor maintaining open-end plan. Section 226.5a does not impose disclosure requirements on a creditor that maintains the underlying open-end credit plan. This is the case even though the creditor offering the open-end credit plan may be considered an agent of the charge card issuer (See comment 2(a)(7)-1.)

3. Form of disclosures. The disclosures required by § 226.5a(f) may appear either in or outside the table containing the required credit disclosures, in circumstances where tabular format is required.

5a(g) Balance computation methods defined.

1. Daily balance method. Card issuers using the daily balance method may disclose it using the name "average daily balance (including new purchases)" or "average daily balance (excluding new purchases)," as appropriate. Alternatively, such card issuers may explain the method. (See comment 7(e)-5 for a discussion of the daily balance method.)

2. Two-cycle average daily balance methods. The "two-cycle average daily balance" methods described in § 226.5a(g)(2)(i) and (ii) include those methods in which the balances for two

billing cycles may be added together to compute the finance charge. The method is a "two-cycle average daily balance" even if the finance charge will be based on both the current and prior cycle balances only under certain circumstances, such as when purchases during a prior cycle were carried over into the current cycle and no finance charge was assessed during the prior cycle. Furthermore, the method is a "two-cycle average daily balance method" if the balances for both the current and prior cycles are average daily balances, even if those balances are figured differently. For example, the name "two-cycle average daily balance (excluding new purchases)" should be used to describe a method in which the finance charge for the current cycle, figured as an average daily balance excluding new purchases, will be added to the finance charge for the prior cycle, figured as an average daily balance of only new purchases during that prior cycle.>

7. Comments 5b-1 through 5b(h)-3 and headings would be added to read as follows:

Section 226.5b--Requirements for home equity plans

1. Coverage. This section applies to all open-end credit plans secured by the consumer's "dwelling," as defined in § 226.2(a)(19), and is not limited to plans secured by the consumer's principal dwelling. (See the commentary to § 226.3(a), which discusses whether transactions are consumer or business-purpose credit, for guidance on whether a home equity plan is subject to Regulation Z.)

2. Disclosure of repayment phase--applicability of requirements. Some plans provide in the initial agreement for a period during which no further draws may be taken and repayment of the amount borrowed is made. All of the applicable disclosures in this section must be given for the repayment phase. Thus, for example, creditors must provide payment information about the repayment phase as well as about the draw period, as required by § 226.5b(d)(5). If the rate that will apply during the repayment phase is fixed at a known amount, the creditor must provide an APR under § 226.5b(d)(6) with regard to that phase. If, however, a creditor uses an index to determine the rate that will apply at the time of conversion--even if the rate during the repayment phase will be fixed--creditors must provide the information in § 226.5b(d)(12), as applicable.

3. Disclosure of repayment phase--timing options. Creditors have a choice about when the disclosure of the terms for the repayment phase may be given. Creditors may provide the information at the same time the application disclosures for the draw period required by § 226.5b are given to the consumer. As an alternative, creditors may disclose only the basic payment terms information under § 226.5b(d)(5)(i) and (ii) with the application disclosures, and defer the other disclosures about the repayment phase until the end of the draw period. Disclosures must be based on the information available at that later time. (See model form G-14C.) In either case, creditors are required to provide information about the repayment phase set forth in § 226.6(e)(2).

4. Repayment phase--applicability of closed-end provisions and substantive rules. Creditors providing disclosures about a repayment phase under §§ 226.5b and 226.6, whether at the time an

application is provided or at the end of the draw period, are not required to provide additional disclosures under Subpart C of the regulation for closed-end credit. Creditors are required to continue providing periodic statements under § 226.7 and to comply with the other open-end credit provisions of subpart B of the regulation, including the substantive provisions in § 226.5b(f). If the original home equity plan agreement does not call for a repayment phase to follow the draw period, and the consumer and creditor later enter into a closed-end agreement to repay the outstanding balance, the creditor must give closed-end credit disclosures pursuant to subpart C. In such cases, the open-end provisions in subpart B, including the substantive rules, do not apply to the closed-end credit transaction.

5. Spreader clause. When a creditor holds a mortgage or deed of trust on the consumer's dwelling and that mortgage or deed of trust contains a "spreader clause" (also known as a "dragnet" or cross-collateralization clause), subsequent occurrences such as the opening of a plan are subject to the rules applicable to home equity plans to the same degree as if a security interest were taken directly to secure the open-end plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.

5b(a) Form of disclosures.

5b(a)(1) General.

1. Written disclosures. The disclosures required under this section must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. (See the commentary to § 226.6(e) for special rules when disclosures required under § 226.5b(d) are given in a retainable form.)

2. Disclosure of annual percentage rate--more conspicuous requirement. As provided in § 226.5(a)(2), when the term "annual percentage rate" is disclosed with a number, it must be more conspicuous than other required disclosures.

3. Segregation of disclosures. While the disclosures must be grouped together and segregated from all unrelated information, the creditor is permitted to include information that explains or expands on the required disclosures, including, for example:

- Any prepayment penalty
- The manner in which a substitute index may be chosen
- Actions the creditor may take short of terminating and accelerating an outstanding balance
- Renewal terms
- Rebate of fees

An example of information that does not explain or expand on the required disclosures and cannot be included is the creditor's underwriting criteria, although the creditor could provide such information separately from the required disclosures.

4. Method of providing disclosures. A creditor may provide a single disclosure form for all of its home equity plans, as long as the disclosure describes all aspects of the plans. For example, if the creditor offers several payment options, all such options must be disclosed. (See, however, the commentary to § 226.5b(d)(5)(iii), § 226.5b(d)(12)(x), and § 226.5b(d)(12)(xi) for disclosure requirements relating to these provisions.) If any aspects of a plan are linked together, the creditor must disclose clearly the relationship of the terms to each other. For example, if the consumer can only obtain a particular

payment option in conjunctions with a certain variable-rate feature, this fact must be disclosed. A creditor has the option of providing separate disclosure forms for multiple options or variations in features. For example, a creditor that offers different payment options for the draw period has the option of creating separate disclosure forms for the two payment options. The creditor using this alternative, however, must include a statement on each disclosure form that the consumer should ask about the creditor's other home equity programs. This disclosure is required only for those programs generally available to the public. Thus, if the only other programs available are employees preferred-rate plans, for example, the creditor would not have to provide this statement. A creditor who receives a request for information about other available programs must provide the additional disclosures as soon as reasonably possible.

5b(a)(2) Precedence of Certain Disclosures.

1. Precedence rule. The list of conditions provided at the creditor's option under § 226.5b(d)(4)(iii) need not precede the other disclosures.

5b(b) time of disclosures.

1. Mail and telephone applications. If the creditor sends applications through the mail, the disclosures and a brochure must accompany the application. If an application is taken over the telephone, the disclosures and brochure may be delivered or mailed within three business days of taking the application. If an application is mailed to the consumer following a telephone request, however, the creditor also must send the disclosures and a brochure along with the application.

2. General purpose applications. the disclosures and a brochure need not be provided when a general purpose application is given to a consumer unless the application or materials accompanying it indicate that it can be used to apply for a home equity plan. In all cases where an application is provided in response to a consumer's specific inquiry about a home equity plan, the disclosures and a brochure must accompany the application. In such instances, the disclosures and brochure must be provided whether or not the application or its accompanying materials specify that the application can be used for a home equity plan. (See the commentary to § 226.5b(h) regarding the imposition of a nonrefundable fee.)

3. Publicly-available applications. Some creditors make applications, such as "take-ones," available without the need for a consumer to request them. These applications must be accompanied by the disclosures and a brochure, such as by attaching the disclosures and brochure to the application form.

4. Response cards. A creditor may solicit consumers for its home equity plan by mailing a "response card" which the consumer returns to the creditor to indicate interest in the plan. The creditor need not always provide the disclosures and brochure in the solicitation materials. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan, the creditor need not send the disclosures and brochure with the response card.

5. Denial or withdrawal of application. In situations where footnote 10a permits the creditor a three-day delay in providing disclosures and the brochure, if the creditor determines within that period that an application will not be

approved, the creditor need not provide the consumer with the disclosures or brochure. If the consumer withdraws the application within this three-day period, the creditor also need not provide the disclosures or brochure.
6. Intermediary agent or broker. In determining whether or not an application involves an "intermediary agent or broker" as discussed in footnote 10a, creditors should consult the provisions in comment 19(b)-3.
5b(c) Duties of third parties.
1. Disclosure requirements. Although third parties who give applications to consumers for home equity plans must provide the brochure required under § 226.5b(e) in all cases, such persons need provide disclosures only in certain instances. A third party has no duty to obtain disclosures about a creditor's home equity plan or to create a set of disclosures based on what it knows about a creditor's plan. If, however, a creditor provides the third party with disclosures along with its application form, the third party must give the disclosures to the consumer with the application form. If an intermediary agent or broker takes an application over the telephone or receives an application contained in a magazine or other publication, footnote 10a permits such a person to mail the disclosures and brochure within three business days of receipt of the application. (See the commentary to § 226.5b(h) about imposition of a nonrefundable fee.)
5b(d) Content of disclosures.
1. Disclosures given as applicable. The disclosures required under this section need be made only as applicable. Thus, for example, if negative amortization cannot occur in a home equity plan, a reference to it need not be given.
5b(d)(1) Retention of information
1. When disclosures not required. The creditor need not disclose that the consumer should make or otherwise retain a copy of the disclosures if they are retainable--for example, if the disclosures are not part of the application that must be returned to the creditor to apply for the plan.
5b(d)(2) Conditions for disclosed terms.

Paragraph 5b(d)(2)(i)

1. Guaranteed terms. the requirement that the creditor disclose the time by which an application must be submitted to obtain the disclosed terms does not require the creditor to guarantee any terms. If a creditor chooses not to guarantee any terms, it must disclose that all of the terms are subject to change prior to opening the plan. The creditor also is permitted to guarantee some terms and not others, but must indicate which terms are subject to change.
2. Date for obtaining disclosed terms. The creditor may disclose either a specific date or a time period for obtaining the disclosed terms. If the creditor discloses a time period, the consumer must be able to determine from the disclosure the specific date by which an application must be submitted to obtain any guaranteed terms. For example, the disclosure might read, "to obtain the following terms, you must submit your application within 60 days after the date appearing on this disclosure," provided the disclosure form also shows the date.

Paragraph 5b(d)(2)(ii)

1. Relation to other provisions. Creditors should consult the rules in § 226.5b(g) regarding refund of fees.
5b(d)(4) Possible actions by creditor.

Paragraph 5b(d)(4)(i)

1. Fees imposed upon termination. The creditor is not required to disclose that fees are imposed when the plan expires in accordance with the agreement. In addition, fees associated with collection of the debt, such as attorneys fees and court costs, as well any increase in the annual percentage rate linked to the consumer's failure to make payments, need not be disclosed. The creditor, however, would have to provide this disclosure if such fees as penalty or prepayment fees may be imposed upon termination. The actual amount of the fee need not be disclosed.

Paragraph 5b(d)(4)(ii)

1. Request by consumer. If the creditor receives a request from a consumer prior to the opening of a plan for information about possible actions that the creditor may take concerning the plan, the creditor must provide this information as soon as reasonably possible after the request.

Paragraph 5b(d)(4)(iii).

1. Disclosure of conditions. In making this disclosure, the creditor may provide a higlighted copy of the document that contains such information, such as the contract or security agreement. The relevant items must be distinguished from the other information contained in the document. For example, the creditor may provide a cover sheet that specifically points out which contract provisions contain the information, or may mark the relevant items on the document itself. As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in § 226.5b(f)(2) and § 226.5b(f)(3)(vi). In describing specified changes that may be implemented during the plan, the creditor may provide a disclosure such as: "Our agreement permits us to make certain changes to the terms of the line at specified times or upon the occurrence of specified events."
2. Form of disclosure. The list of conditions under § 226.5b(d)(4)(iii) may appear with the segregated disclosures or apart from them. If the creditor elects to provide the list of conditions with the segregated disclosures, it need not comply with the precedence rule in § 226.5b(a)(2).
5b(d)(5) Payment Terms.

Paragraph 5b(d)(5)(i)

1. Length of the plan. The combined length of the draw period and any repayment period need not be stated. If the length of the plan is indefinite, the creditor must state that fact.
2. Renewal provisions. If, under the credit agreement, a creditor retains the right to review a line at the end of the specified draw period and determine whether to renew or extend the draw period of the plan, the possibility of renewal or extension--regardless of the likelihood of renewal--should be ignored for purposes of the disclosures. For example, if an agreement provides that the draw period is five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years. (See the commentary accompanying § 226.9(c)(1) dealing with change in terms requirements.)

Paragraph 5b(d)(5)(ii)

1. Determination of the minimum periodic payment. This disclosure must reflect how the minimum periodic payment is determined, but need only describe the principal and interest components of the payment. Other charges that may be part of the payment (as well as the balance computation method) may, but need not, be described under this provision.
2. Fixed rate and term payment options during draw period. If the home equity plan permits the consumer to pay off all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period, this feature must be disclosed. To illustrate, a variable-rate plan may permit a consumer to elect during a ten-year draw period to repay all or a portion of the balance over a three-year period at a fixed rate. The creditor must disclose the rules relating to this feature including the period during which the option can be selected, the length of time over which repayment can occur, any fees imposed for such a feature, and the specific rate or the index and margin that will apply upon exercise of this choice. For example, the rate disclosure might state, "If you choose to convert any portion of your balance to a fixed rate, the rate will be the highest prime rate published in the "Wall Street Journal" that is in effect at the date of conversion plus 2 percentage points." If the fixed rate is to be determined according to an index, it must be one that is outside the creditor's control and is publicly available in accordance with § 26.5b(f)(1). The effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example required in § 26.5b(d)(12)(xi).
3. Balloon payments. In programs where the occurrence of a balloon payment is uncertain or unlikely but possible, the creditor must disclose the possibility of a balloon payment. In such cases, the disclosure might read, "Your minimum payment may not fully repay the principal outstanding on your line. You may be required to pay the entire outstanding balance in a single payment." In programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must reflect that fact. For example, the disclosure might read, "Your minimum payment will not fully repay the principal that is outstanding on your line. You will be required to pay the entire outstanding balance in a single payment." In making this disclosure, the creditor is not required to use the term "balloon payment." The creditor also is not required to disclose the amount of the balloon payment. (See, however, the requirement under § 226.5b(d)(5)(iii).) The balloon payment disclosure does not apply in cases where repayment of the entire outstanding balance would occur only as a result of termination and acceleration. The creditor also need not make a disclosure about balloon payments if the final payment could not be more than twice the amount of other minimum payments under the plan.

Paragraph 5b(d)(5)(iii)

1. Minimum periodic payment example. In disclosing the payment example, the creditor may assume that the credit limit as well as the outstanding balance is $10,000 if such an assumption is relevant to calculating payments. (If the creditor only offers lines of credit for

less than $10,000, the creditor may assume an outstanding balance of $5,000 instead of $10,000 in making this disclosure.) The example should reflect the payment comprised only of principal and interest, and can assume that all months have an equal number of days. Creditors may provide an additional example reflecting other charges which may be included in the payment, such as credit insurance premiums. For variable-rate plans, this example must be based on the last rate in the historical example required in § 226.5b(d)(12)(xi), or a more recent rate. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.

2. Representative examples. In plans that have multiple payment options within the draw period or within any repayment period, the creditor may provide representative examples as an alternative to providing examples for each payment option. The creditor may elect to provide representative payment examples based on three categories of payment options. The first category consists of plans that permit minimum payment of only accrued finance charges ("interest only" plans). The second category includes plans in which a fixed percentage or a fixed fraction of the outstandisng balance or credit limit (for example, 2 percent of the balance of 1/180th of the balance) is used to determine the minimum payment. The third category includes all other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges. Creditors may classify their minimum payment arrangements within one of these three categories even if other features exist, such as varying lengths of a draw or repayment period, required payment of past due amounts, late charges and minimum dollar amounts. The creditor may use a single example within each category to represent the payment options in that category. For example, if a creditor permits minimum payments of 1%, 2%, 3% or 4% of the outstanding balance, it may pick one of these four options and provide the example required under § 226.5b(d)(5)(iii) for that option alone. The example used to represent a category must be an option commonly chosen by consumers, or a typical or representative example. (See the commentary to § 226.5b(d)(12)(x) and § 226.5b(d)(12)(xi) for a discussion of the use of representative examples for making those disclosures. Creditors choosing to use a representative example within each category must use the same example for purposes of the disclosure under § 226.5b(d)(5)(iii), § 226.5b(d)(12)(x), and § 226.5b(d)(12)(xi).) Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods. In setting forth payment examples for any repayment period under this section (and the historical example under § 226.5b(d)(12)(xi)), creditors should assume a $10,000 advance is taken at the beginning of the draw period and is reduced according to the terms of the plan. Creditors should not assume an additional advance is taken at any time, including at the beginning of any repayment period. Creditors may use representative examples under § 226.5b(d)(5) only with respect to the payment example required under paragraph (d)(5)(iii). Creditors must provide a full narrative description of all payment options under § 226.5b(d)(5) (i) and (ii).

3. Reverse mortgages. Reverse

mortages, also known as reverse annuity or home equity conversion mortgages, in addition to permitting the consumer to obtain advances, may involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the reverse mortgage (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these plans, creditors must apply the following rules, as applicable:
- If the reverse mortgage has a specified period for draws and disbursements but repayment is due only upon occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the line at the time the draw period and our payments to you end. As provided in your agreement, your repayment may be required at a different time." The single payment should be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The example of the minimum payment under § 226.5b(d)(5)(iii) should assume a single $10,000 draw.
- If the reverse mortgage has neither a specified period for advances or disbursements nor a specified repayment date and these terms will be determined solely by reference to future events, including the consumer's death, the creditor may assume that the draws and disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)
- In making the disclosures, the creditor must assume that all draws and disbursements and accrued interest will be paid by the consumer. For example, if the note has a non-recourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be drawn or disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement."
- Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The appreciation feature must be disclosed in accordance with §

226.5b(d)(12).

5b(d)(6) Annual Percentage Rate

1. Preferred-rate plans. If a creditor offers a preferential fixed-rate plan in which the rate will increase a specified amount upon the occurrence of a specified event, the creditor must disclose the specific amount the rate will increase.

5b(d)(7) Fees Imposed by Creditor

1. Applicability. The fees referred to in § 226.5b(d)(7) include items such as application fees, points, annual fees, transaction fees, and fees imposed for converting to the repayment phase provided for in the original agreement. This disclosure includes any fees that are imposed by the creditor to use or maintain the plan even if such fees are passed on by the creditor to a third party. For example, if a creditor annually obtains a credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be specifically stated. Third party fees to open the plan that are initially paid by the consumer to the creditor may be included in this disclosure or in the disclosures under § 226.5b(d)(8).
2. Manner of describing fees. Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit. The creditor may provide a stepped fee schedule in which a fee will increase a specified amount at a specified date. (See the discussion contained in the commentary to § 226.5b(f)(3)(i).)
3. Fees not required to be disclosed. Fees imposed for late payment, stopping payment, returned checks, exceeding the credit limit, or closing out an account do not have to be disclosed under this section. Credit report and appraisal fees imposed to investigate whether a condition permitting a freeze continues to exist--as discussed under § 226.5b(f)(3)(vi)--are not required to be disclosed under this section or § 226.5b(d)(8).
4. Rebates of closing costs. If closing costs are imposed they must be disclosed, regardless of whether such costs may be rebated later (for example, rebated to the extent of any interest paid during the first year of the plan).

5b(d)(8) Fees Imposed by Third Parties to Open a Plan

1. Applicability. Section 226.5b(d)(8) applies only to fees imposed by third parties to open the plan. Thus, for example, this section does not require disclosure of a fee imposed by a government agency at the end of a plan to release a security interest. Fees to be disclosed include appraisal, credit report, government agency, and attorney fees as well as premiums for property insurance required by the creditor.
2. Itemization of third party fees. In all cases creditors must state third party fees as a single dollar amount or a range. A creditor has two options with regard to providing more detailed information about third party fees. Creditors may provide a statement that the consumer may request more specific cost information about third party fees from the creditor. Upon receiving a consumer's request for such an itemization prior to the consumer opening the plan, the creditor must provide the information as soon as reasonably possible. As an alternative to

including this statement, creditors may provide an itemization of such fees (by type and amount) with the early disclosures.
3. Manner of describing fees. A good faith estimate of the amount of fees msut be provided. Creditors may provide a range for such fees or state the fees on the basis of a typical or representative amount of credit. Fees may be expressed on a unit cost basis, for example, $5 per $1,000 of credit.
4. Rebates of third party fees. Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to § 226.5b(d)(7).)

5b(d)(10) Transaction Requirements

1. Applicability. A limitation on automated teller machine usage need not be disclosed under this paragraph, unless that is the only means by which the consumer can obtain funds.

5b(d)(12) Disclosure for Variable-Rate Plans

1. Variable-rate provisions. Model forms G-14A, G-14B and G-14C provide illustrative guidance on the variable-rate rules.

Paragraph 5b(d)(12)(iv)

1. Determination of annual percentage rate. If the creditor adjusts its index through the addition of a margin, the disclosure might read, "Your annual percentage rate is based on the index plus a margin." The creditor is not required to disclose the specific value of the margin.

Paragraph 5b(d)(12)(viii)

1. Preferred-rate provisions. This paragraph requires disclosure of preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor.

Paragraph 5b(d)(12)((ix)

1. Periodic limitations on increases in rates. The creditor must disclose any annual limitations on increases in the annual percentage rate. If the creditor bases its rate limitation on 12 monthly billing cycles, such a limitation should be treated as an annual cap. Rate limitations imposed on less than an annual basis must be stated in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, this must be expressed as a six-month time period. If the creditor does not impose periodic limits (annual or shorter) on rate increases, the fact that there are no annual rate limitations must be stated.
2. Maximum limitations on increases in rates. The maximum annual percentage rate that may be imposed under each payment option over the term of the plan (including the draw period and any repayment period provided for in the initial agreement) must be provided. The creditor may disclose this rate as a specific number (for example, 18 percent) or as a specific amount above the initial rate. For example, this disclosure might read, "The maximum annual percentage rate that can apply to your line will be 5 percentage points above your initial rate." If the creditor states the maximum rate as a specific amount above the initial rate, the creditor must include a statement that the

consumer should inquire about the rate limitations that are currently available. If an initial discount is not taken into account in applying maximum rate limitations, that fact must be disclosed. If separate overall limitations apply to rate increases resulting from events such as the exercise of a fixed-rate conversion option or leaving the creditor's employ, those limitation also must be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations.
3. Form of disclosures. The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest periodic and maximum rate limitations that may be applicable to the creditor's home equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.

Paragraph 5b(d)(12)(x)

1. Maximum rate payment example. In calculating the payment creditors should assume the maximum rate is in effect. Any discounted or premium initial rates or periodic rate limitations should be ignored for purposes of this disclosure. If a range is used to disclosure the maximum cap under § 226.5b(d)(12)(ix), the highest rate in the range must be used for this disclosure. As an alternative to making disclosures based on each payment option, the creditor may choose a representative example within the three categories of payment options upon which to base this disclosure. (See the commentary to § 226.5b(d)(5).) However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods. Creditors should calculate the example for the repayment period based on an assumed $10,000 balance. (See the commentary to § 226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)
2. Time the maximum rate could be reached. In stating the date or time by which the maximum rate could be reached creditors should assume the rate increases as rapidly as possible under the plan. In calculating when this date or time could be reached, creditors should factor in any discounted or premium initial rates or periodic rate limitations. This disclosure must be provided for the draw phase and any repayment phase. In calculating this disclosure for the draw and any repayment phase, creditors should assume the index and margin shown in the last year of the historical example (or a more recent rate) is in effect at the beginning of each phase.

Paragraph 5b(d)(12)(xi)

1. Index values. Index values and annual percentage rates must be shown for the entire 15 years of the historical example and must be based on the most recent 15 years. The example must be updated annually to reflect the most recent 15 years of index values. If the length of the plan is less than 15 years, payments need only be shown for the number of years in the term, though all significant plan terms such as rate limitations must be shown for the entire 15 years. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values have been available in giving a history and payment example and may start the

example at the year for which values are first available. The creditor should assume that the $10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan, and that the consumer takes no subsequent draws. As discussed in the commentary to § 226.5b(d)(5), creditors should not assume an additional advance is taken at the beginning of any repayment period. If applicable, the creditor may assume the $10,000 is both the advance and the credit limit. (See the commentary to § 226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

2. Selection of index values. The historical example must reflect the method of choosing index values for the plan. For example, if an average of index values is used in the plan, averages would be used in the history, but if an index value as of a particular date is used, a single index value would be shown. The creditor is required to assume one date within a year (or one period, if an average is used) on which to base the history of index values for each loan plan. The creditor may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the index history. Only one index value per year need be shown, even if the plan provides for adjustments to the annual percentage rate or payment more than once in a year. In such cases, the creditor can assume that the index rate remained constant for the full year for the purpose of calculating the annual percentage rate and payment.

3. Calculation of payments. The payment figures in the historical example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted initial rate, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have applied to the plan. A creditor need show only one payment per year in the example, even though payments may vary during a year. (The calculations should be based on the actual payment computation formula, although the creditor may assume that all months have an equal number of days.) The creditor may assume that payments are made on the last day of the billing cycle, the billing date or the payment due date, but must be consistent in the manner in which the period used to illustrate payment information is selected. Information about balloon payments may, but need not, be reflected in the example.

4. Representatives payment options. The creditor need not provide an historical example for all of its various payment options, but may select a representative payment option within each of the three categories of payments upon which to base its disclosure. (See the commentary to § 226.5(d)(5).)

5. Reverse mortgages. The historical example for reverse mortgages would reflect 15 years of index values and annual percentage rates, but the payment column would be blank until the year that the single payment will be made, assuming that payment is estimated to occur within 15 years. (See the commentary to § 226.5(d)(5) for a discussion of reverse mortgages.)

6. Rate limitations. Both periodic and maximum rate limitations must be reflected in the historical example, If ranges of rate limitations are provided under § 226.5(d)(120(ix), the highest periodic and maximum rates provided in

those ranges must be used in the example. Rate limitations that may apply more often than annual should be treated as if they are annual limitations. For example, if a creditor imposes a 1% cap every six months, this should be reflected in the example as if it were a 2 percent annual cap.

7. Selection of margin. A value for the margin must be assumed in order to prepare the example. A creditor must select a representative margin that it has used with the index during the six months preceding preparation of the disclosures and state that the margin is one that it has used recently. The margin selected may be used until the creditor annually updates the disclosure form to reflect the most recent 15 years of index values.

8. Amount of discount or premium. In reflecting any discounted or premium initial rate, the creditor may select a discount or premium that has been used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the example for as long as it is in effect. The creditor may assume that a discount or premium that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example.

9. Disclosures for repayment period. In providing the historical example, creditors that choose to provide disclosures about the repayment period as part of the disclosures provided with an application (see the commentary to § 226.5b for a discussion of the options available on the giving of such disclosures) must reflect all features of the repayment period in the table, including the appropriate index values, margin, rate limitations, length of the repayment period, and payments. For example, if different indices are used during the draw and repayment periods, the index values for that portion of the 15 years that reflect the repayment period must be the values for the appropriate index. Creditors that choose to provide information about the repayment period at the end of the draw period, rather than with the application disclosures, need not reflect the repayment period in the example (just as they may omit information about the repayment period for purposes of the disclosures under § 226.5b(d)(12) generally). In such cases, the index values and annual percentage rates relating to the draw period would be shown for the entire 15 years (even if the draw period is less than 15 years).

5b(e) Brochure

1. Substitutes. A brochure is a suitable substitute for the Board's home equity brochure if it is, at a minimum, comparable to the Board's brochure in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the Board's brochure.

5b(f) Limitations on Home Equity Plans

1. Coverage. Section 226.5b(f) limits both actions that may be taken and language that may be included in contracts, and applies to any assignee and holder as well as to the original creditor. The limitations apply to the draw period and any repayment period, and to any renewal or modification of the original agreement.

Paragraph 5b(f)(1)

1. External index. A creditor may change the annual percentage rate for a plan only if the change is based on an index outside the creditor's control. Thus, a creditor may not make rate changes based on its own prime rate or cost of funds and may not reserve a contractual right to change rates at its discretion. A creditor is permitted, however, to use a published prime rate, such as that in the "Wall Street Journal", even if the bank's own prime rate is one of several rates used to establish the published rate.
2. Publicly available. The index must be available to the public. A publicly available index need not always be published in a newspaper, but it must be one the consumer can independently obtain and use to verify rates imposed under the plan.
3. Provisions not prohibited. This paragraph does not prohibit rate changes that are specifically set forth in the agreement. For example, stepped-rate plans, in which specified rates are imposed for specified periods, are permissible. In addition, preferred-rate provisions, in which the rate increases by a specified amount upon the occurrence of a specified event, also are permissible.

Paragraph 5b(f)(2)

1. Limitations on termination and acceleration. In general, creditors are prohibited from terminating and accelerating payment of the outstanding balance before the scheduled expiration of a plan. However, creditors may take these actions in the three circumstances specified in § 226.5b(f)(2). Creditors are not permitted to specify in their contracts any other events that allow terminating an acocunt or accelerating payment of the outstanding balance beyond those permitted by the regulation. Thus, for example, an agreement may not provide that the balance is payable on demand nor may it provide that the account will be terminated and the balance accelerated if the rate cap is reached.
2. Other actions permitted. If one of the events permitting termination and acceleration occurs, a creditor may instead take actions short of terminating and accelerating. For example, a creditor could suspend further advances, reduce the credit limit, change the payment terms, or require the consumer to pay a fee. A creditor also may provide in its agreement that a higher rate or higher fees will apply in circumstances under which it would otherwise be permitted to terminate the plan and accelerate the balance. A creditor that does not immediately terminate an account and accelerate payment or take another permitted action may take such action at a later time, provided one of the conditions permitting termination and acceleration exists at that time.

Paragraph 5b(f)(2)(i)

1. Fraud or material misrepresentation. A creditor may terminate a plan and accelerate the balance if there has been fraud or material misrepresentation by the consumer in connection with the plan. This exception includes fraud or misrepresentation at any time, either during the application process or during the draw period and any repayment period. What constitutes fraud or misrepresentation is determined by applicable state law and may include acts of omission as well as overt acts, as long as any necessary intent on the part of the consumer exists.

Paragraph 5b(f)(2)(ii)

1. Failure to meet repayment terms. A creditor may terminate a plan and accelerate the balance if the consumer has failed to meet the repayment terms of the agreement. Failure to make payments occurs if the consumer has not made the payment within 60 days of the payment due date. Failure to make payments also would be deemed to occur if the consumer is in default for failure to make a required payment (as provided for by state or other applicable law) and the consumer does not make the payment (plus any applicable late or deferral charges) within 30 days after a credtior provides a written notice of the missed payment and the consequences of continued failure to pay. A creditor may not terminate a plan or accelerate the balance if the consumer makes payment of the amount due (the payment plus any late or deferral charges) within the 30-day period. If the consumer has received such a notice more than twice in any one-year period, and then does not make a payment, the creditor may terminate the account and accelerate the balance without providing an additional written notice. To the extent that applicable state law provides that a creditor must send a particular right to cure notice before terminating a plan and accelerating the balance or provides for a period longer than 30 days, this provision does not supersede such a requirement. Failure to make payments does not occur if, for example, the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. Filing for bankruptcy permits termination if the consumer fails to make payments under the plan.

Paragraph 5b(f)(2)(iii)

1. Impairment of security. A creditor may terminate a plan and accelerate the balance if the consumer's action or inaction adversely affects the creditor's security for the plan, or any right of the creditor in that security. Action or inaction by third parties does not permit the creditor to terminate and accelerate.
2. When permitted. A creditor may terminate and accelerate, for example, if the consumer transfers title to the property or sells the property without the permission of the creditor, of if the consumer fails to maintain required insurance on the dwelling. A consumer's failure to pay taxes on the property or action by the consumer that results in a lien senior to that held by the creditor also permits the creditor to terminate and accelerate. Death of the sole consumer obligated on a plan, taking of property through eminent domain, and foreclosure by a prior lienholder permit termination and acceleration. By contrast, the filing of a judgment against the consumer would permit termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. If the consumer commits waste or otherwise destructively uses or fails to maintain the property such that the action adversely affects the security, the plan may be terminated. Illegal use of the property by the consumer would permit termination of the plan if it subjects the property to seizure. If the consumer moves out of the dwelling that secures the plan, the creditor may not terminate a plan and accelerate the balance unless the consumer's action adversely affects the security.

Paragraph 5b(f)(3)

1. Scope of provision. In general, a creditor may not change the terms of a plan after it is opened. For example, a creditor may not increase any fee or impose a new fee once the plan has been opened. The change of terms prohibition applies to all features of a plan, not only those required to be disclosed under the regulation. For example, a creditor may not increase the margin for a variable-rate plan. This provision also applies to charges imposed for later payment, for example, though this fee is not required to be disclosed under § 226.5b(d)(7).
2. Charges not covered. There are three charges not covered by this provision. A creditor may pass on any increases for property taxes since such charges are imposed by a governmental body and are beyond the control of the creditor. In addition a creditor may pass on increases in premiums for property insurance described in § 226.4(d)92) and increases in credit insurance premiums described in § 226.4(d)(1), provided such increased costs are imposed by a third party.

Paragraph 5b(f)(3)(i)

1. Changes provided for in agreement. A creditor may provide in the initial agreement for specific changes to take place upon the occurrence of specific events. Both the triggering event and the resulting modification must be stated with specificity. For example, in an employee home equity plan, the agreement could provide that a specified higher rate or margin will apply if the borrower's employment with the creditor ends. A contract also could contain a stepped-rate or stepped-fee schedule providing for specified changes in the rate or the fees on certain dates or after a specified period of time. A creditor also may provide in the initial agreement that it will be entitled to a share of the appreciation in the value of the property as long as the specific appreciation share and the specific circumstances which require the payment of it are set forth. A contract also may permit a consumer to switch among minimum payment options during the plan.
2. Prohibited provisions. A creditor may not include a general provision in its agreement permitting changes to any or all of the terms of the plan. For example, creditors may not include "boilerplate" language in the agreement stating that they reserve the right to change the fees imposed under the plan. In addition, a creditor may not include any "triggering events" or responses that the regulation expressly addresses in a manner different from that provided in the regulation. For example, an agreement may not provide that the margin in a variable-rate plan will increase if there is a material change in the consumer's financial circumstances, because the regulation specifies that temporarily freezing the line or lowering the credit limit is the permissible response to a material change in the consumer's financial circumstances. Similarly a contract cannot contain a provision allowing the creditor to freeze a line due to an insignificant decrease in property value since the regulation allows that response only for a significant decrease.

Paragraph 5b(f)(3)(ii)

1. Substitution of index. A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and

replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

Paragraph 5b(f)(3)(iii)

1. Changes by written agreement. A creditor may change the terms of a plan if the consumer expressly agrees in writing to the change at the time it is made. For example, a consumer and a creditor could agree in writing to change the repayment terms from interest-only payments to payments that reduce the principal balance. The creditor must comply with the change in terms notice requirements in § 226.9(c), and the agreement is governed by the limitations in § 226.5b(f). For example, a creditor and consumer could not enter into a subsequent agreement to base changes in the annual percentage rate on the movement of an index controlled by the creditor. Similarly, an agreement could not specify events that will permit termination and acceleration other than those permitted by the regulation.
2. Written agreement. The change must be agreed to in writing by the consumer. Creditors are not permitted to assume consent because the consumer uses an account, even if use of an account constitutes acceptance of a proposed change under state law.

Paragraph 5b(f)(3)(iv)

1. Beneficial changes. Creditors may make changes that unequivocally benefit the consumer. Under this provision, a creditor may make changes that offer more options to consumers, as long as existing options remain. For example, a creditor could offer the consumer the option of making lower monthly payments or could increase the credit limit. Similarly, a creditor could extend the length of the plan for any period, as long as it was extended or renewed on the same terms. Creditors are permitted to temporarily reduce the rate or fees charged during the plan (though a change in terms notice may be required under § 226.9(c) when the rate or fees are returned to their original level). Creditors also may offer as an option additional means of access to the line even if fees are associated with using the device, provided that the consumer retains the ability to use prior access devices on the original terms.

Paragraph 5b(f)(3)(v)

1. Insignificant changes. A creditor is permitted to make insignificant changes after a plan is opened. This rule allows accommodation for operational and similar problems, such as changing the address of the creditor for purposes of sending payments. It does not permit a creditor to change a term such as a fee charged for late payments.
2. Examples of Insignificant changes. Creditors may make minor changes to features such as the billing cycle date, the payment due date (as long as the consumer does not have a diminished grace period if one is provided), and the day of the month on which index values are measured to determine changes to the rate for variable-rate plans. A creditor also may change its rounding rules, in accordance with the tolerance

rules set forth in § 226.14 (for example, stating an exact APR of 14.3333 percent as 14.3 percent, even if it had previously been stated as 14.33 percent). A creditor may change the balance computation method it uses only if the change produces an insignifcant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the average daily balance method (including new transactions) to the daily balance method (including new transactions).

Paragraph 5b(f)(3)(vi)

1. Suspension of credit or reduction of credit limit. A creditor may prohibit additional extensions of credit or reduce the credit limit in seven circumstances. A creditor may not take these actions under other circumstances, unless the creditor would be permitted to terminate the line and accelerate the balance as described in § 226.5b(f)(2). The creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment.
2. Temporary nature of suspension or reduction. Creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only while one of the designated circumstances exists. When the circumstance justifying the creditor's action ceases to exist, credit privileges must be reinstated.
3. Imposition of fee. If permitted by state law, a creditor may collect a bona fide and reasonable fee in connection with actual expenses incurred to investigate whether the condition permitting the freeze continues to exist; a creditor may collect only appraisal and credit report fees. A creditor may not, in any circumstances, impose a fee to reinstate a credit line once the condition has been determined not to exist.
4. Reinstatement of credit privileges. Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist. A creditor must monitor the line on an ongoing basis to determine when the condition ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze continues to exist. The frequency with which the creditor investigates to determine whether a condition continues to exist depends upon the specific condition permitting the freeze. As an alternative to such monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges. (See § 226.9(c)(3).) A consumer's request need not be in writing. Once the consumer has made such a request, the creditor must investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.
5. Suspension of credit privileges following request by consumer. A creditor may honor a specific request by a consumer to suspend credit privileges. Thus, for example, if two consumers are obligated under a plan and each has the ability to take advances, the agreement may permit either of the two persons to direct the creditor not to make further advances. If the person who requested suspension subsequently requests reinstatement of draw privileges, the creditor must honor the request for reinstatement.
6. Significant decline defined. What

constitutes a significant decline for purposes of § 226.5b(f)(3)(vi)(A) will vary accordingly to individual circumstances. In any event, if the value of the dwelling declines such that the initial difference between the credit limit and the available equity (based on the property's appraised value for purposes of the plan) is reduced by fifty percent, this constitutes a significant decline in the value of the dwelling for purposes of § 226.5b(f)(3)(vi)(A). For example, assume that a house with a first mortgage of $50,000 is appraised at $100,000 and the credit limit is $30,000. The difference between the credit limit and the available equity is $20,000, half of which is $10,000. Therefore, the creditor could prohibit further advances or reduce the credit limit if the value of the property declines from $100,000 to $90,000.

7. Material change in financial circumstances. Two conditions must be met for § 226.5b(f)(3)(vi)(B) to apply. First, there must be a "material change" in the consumer's financial circumstances, such as a significant decrease in the consumer's income. Second, as a result of this change, the creditor must have a reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. A creditor may, does not have to, rely on specific evidence (such as the failure to pay other debts) in concluding that the second part of the test has been met.

8. Default of a material obligation. Creditors may specify events that would qualify as a default of a material obligation under § 226.5b(f)(3)(vi)(C). For example, a creditor may provide that default of a material obligation will exist if the consumer moves out of the dwelling or permits an intervening lien to be filed that would take priority over future advances made by the creditor.

9. Government limits on the annual percentage rate. Under § 226.5b(f)(3)(vi)(D), a creditor may prohibit further advances or reduce the credit limit if, for example, a state usury law is enacted which prohibits a creditor from imposing the agreed-upon annual percentage rate.

10. Maximum annual percentage rate reached. Under § 226.5b(f)(3)(vi)(G), a creditor may prohibit further advances or reduce the credit limit during any period in which the annual percentage rate reaches the maximum rate allowed under the plan. If the annual percentage rate subsequently declines below the maximum rate, the creditor must reinstate credit privileges.

5b(g) Refund of Fees

1. Refund of fees required. If any disclosed term changes between the time the early disclosures are provided to the consumer and the time the plan is opened, and the consumer as a result decides to not enter into the plan, a creditor must refund all fees paid by the consumer in connection with the application. All fees, including credit report fees, appraisal fees, and insurance premiums, must be refunded whether such fees are paid directly to the creditor or to third parties. A consumer is entitled to a refund of fees under these circumstances whether or not terms are guaranteed by the creditor under § 226.5b(d)(2)(i).

2. Variable-rate plans. The right referred to in this paragraph does not apply to changes resulting from fluctuations in the index value in a variable-rate plan. This includes changes in the annual percentage rate and changes in the

maximum rate if the maximum is expressed as an amount over the initial interest rate.

3. Changes in disclosed terms. If a disclosed term, such as the maximum rate, is stated as a range in the early disclosures, and the term ultimately applicable to the plan falls within that range, a change does not occur for purposes of this section. If, however, no range is used and the term is changed (for example, a rate cap of 6 rather than 5 percentage points over the initial rate), the change would permit the consumer to obtain a refund of fees. If a fee imposed by the creditor is stated in the early disclosures as an estimate and the fee changes, the consumer could elect to not enter into the agreement and would be entitled to a refund of fees. On the other hand, if fees imposed by third parties are disclosed as estimates and those fees change, the consumer is not entitled to a refund of fees paid in connection with the application. Creditors must, however, use the best information available in providing disclosures about such fees.

4. Timing of refunds and relation to other provisions. The refund of fees must be made as soon as reasonably possible after the creditor is notified that the consumer is not entering into the plan because of the changed term, or that the consumer wants a refund of fees. The fact that an application fee may be refunded to some applicants under this provision does not render such fees finance charges under the test set forth in comment 4(c)(1)-1.

5b(h) Imposition of Nonrefundable Fees

1. Collection of fees before consumer receives disclosures. An application fee may be collected before the consumer receives the disclosures and brochure (for example, when an application contained in a magazine is mailed in with an application fee) provided that it remains refundable until three business days after the consumer receives the § 226.5b disclosures. No other fees except a refundable membership fee may be collected until after the consumer receives the disclosures required under § 226.5b.

2. Collection of fees after consumer receives disclosures. A fee may be collected after the consumer receives the disclosures and brochure and before the expiration of three days, although the fee must be refunded if, within three days of receiving the required information, the consumer decides not to enter into the agreement. In such a case, the consumer must be notified that the fee is refundable for three days. If the disclosures and brochure are mailed to the consumer, footnote 10d of the regulation provides that a nonrefundable fee may not be imposed until six business days after the mailing.

3. Relation to other provisions. A fee collected earlier may become nonrefundable except that, under § 226.5b(g), it must be refunded if the consumer elects not to enter into the plan because of a change in terms. (In addition, of course, all fees must be refunded if the consumer later rescinds under § 226.15.)

Section 226.6--Initial Disclosure Statement

8. Comment 6(a)(2)-2 would be amended by adding a sentence after the first sentence in the third bullet paragraph to read as follows:

6(a) Finance Charge.

Paragraph 6(a)(2)

2. Variable-rate disclosures--coverage.
.- (See the rule in § 226.5b(f)(1) applicable to home equity plans, however, which prohibits "rate reservation" clauses.)

9. Comments 6(e)-4 and a heading would be added to read as follows:

6(e) Home equity plan information.

1. Additional disclosures required. For home equity plans, creditors must provide several of the disclosures set forth in § 226.5b(d) along with the disclosures required under § 226.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. This latter requirement can be met by providing a separate list or by identifying the provisions in the contract which contain such conditions. (See the commentary to § 226.5b(d)(4)(iii) regarding the form of this information.)
2. Form of disclosures. The additional home equity disclosures must be in a form the consumer can keep, and are governed by § 226.5(a)(1). The segregation standard set forth in § 226.5b(a) does not apply to home equity disclosures provided under § 226.6.
3. Disclosure of payment and variable-rate examples. The payment example disclosure in § 226.5b(d)(5)(iii) and the variable-rate information in § 226.5b(d)(12)(viii), (x), (xi), and (xii) need not be provided with the disclosures under § 226.6 if:
- The disclosures described in § 226.5b(d) were provided in a form a consumer could keep; and
- The disclosures of the payment example under § 226.5b(d)(5)(iii), the maximum payment example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen.
For example, if a creditor offers three payment options (one in each of the categories described in the commentary to § 226.5b(d)(5)), describes all three options in its early disclosures, and provides the disclosures in a retainable form, that creditor need not provide the § 226.5b(d)(5)(iii) or § 226.5b(d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures, the disclosures under § 226.5b(d)(5)(iii) and § 226.5b(d)(12)(viii), (x), (xi) and (xii) disclosures must be given to any consumer who chooses one of the other two options. If the § 226.5b(d)(5)(iii) and § 226.5b(d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.
4. Disclosures for the repayment period. If the creditor has included complete information about both the draw and repayment phases in the § 226.5b disclosures given at application, the creditor must provide disclosures about both phases when giving the disclosures under § 226.6. Specifically, a creditor must make the disclosures in § 226.6(e) and state the corresponding annual percentage rate and variable-rate

information required in footnote 12 for the repayment phase. However, if the creditor defers providing the bulk of the § 226.5b disclosures for the repayment phase until conversion, the creditor need not provide any information about the repayment period under § 226.6 other than the payment terms listed in § 226.6(e)(2). Thus, for example, if the disclosures are delayed, the creditor would not have to give the variable-rate information set out in footnote 12 for the repayment phase.

Section 226.9--Subsequent Disclosure Requirements

10. Comment 9(c)-1 would be amended by adding a sentence at the end to read as follows:

9(c) Change in terms.

1. "Changes" initially disclosed. The rules in § 226.5b(f) relating to home equity plans, however, limit the ability of a creditor to change the terms of such plans.

11. Comment 9(c)(1)-6 would be added to read as follows:

9(c)(1) Written notice required.

6. Home equity plans. If a creditor renews the draw period for a home equity plan on terms different from the original plan, the requirements of § 226.9(c) apply to such a change. Thus, for example, a creditor must provide a notice of the changed terms at least 15 days before the change takes effect.

12. Comment 9(c)(3)-1 and a heading would be added to read as follows:

Paragraph 9(c)(3).

1. Notice not required. A creditor need not provide a notice under this paragraph if, pursuant to the commentary to § 226.5b(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.

13. Comment 9(e)-1 through 9(e)(3)-2 and headings would be added to read as follows:

9(e) Disclosures upon renewal of credit or charge card.

1. Coverage. This paragraph applies to credit and charge card accounts of the type subject to § 226.5a. (See § 226.5a(a)(3) and the accompanying commentary for discussion of the types of accounts subject to § 226.5a.) The disclosure requirements are triggered when a card issuer imposes any annual or other periodic fee on such an account, whether or not the card issuer originally was required to provide the application and solicitation disclosures described in § 226.5a.

2. Form. The disclosures under this paragraph must be clear and conspicuous, but need not appear in a tabular format or in a prominent location. The disclosures need not be in a form the cardholder can retain.

3. Terms at renewal. Renewal notices must reflect the terms actually in effect at the time of renewal. For example, a card issuer that offers a preferential annual percentage rate to employees during their employment would send a renewal notice to employees disclosing the lower rate actually charged to employees rather than the rate charged to the general public.

4. Variable rate. If the card issuer cannot determine the rate that will be in effect if

the cardholder chooses to renew a variable-rate account, the card issuer may disclose any rate applicable to the account within the 30- day period prior to the mailing of the renewal notice.

5. Periodic fees. If a renewal fee is billed more often than annually, the renewal notice should be provided each time the fee is billed. In this instance, the fee need not be disclosed as an annualized amount. Alternatively, the card issuer may provide the notice no less than once every twelve months if the notice explains the amount and frequency of the fee that will be billed during the time period covered by the disclosure, and also disclose the fee as an annualized amount. The notice under this alternative also must state the consequences of a cardholder's decision to terminate the account after the renewal notice period has expired. For example, if a $2 fee is billed monthly but the notice is given annually, the notice must inform the cardholder that the monthly charge is $2, the annualized fee is $24 and $2 will be billed to the account each month for the coming year unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid monthly charges if the cardholder terminates the account during the coming year but after the first month, the notice must disclose that fact.

6. Terminating credit availability. The regulation does not address the form or the content of the card issuer's instructions on how and when a cardholder may terminate credit availability to avoid paying the renewal fee. State and other applicable law governs whether the card issuer may, for example, require the consumer's response to be in writing or the outstanding balance to be repaid in full.

9(e)(1) Notice Prior to Renewal

1. Timing of advance notice. If the card issuer chooses to give advance notice under § 226.9(e)(1), the renewal notice must be provided at least 30 days or one billing cycle, whichever is less, before the renewal date. Thus, for example, if a billing cycle is 28 days (February 1 through February 28) and an annual fee is posted to the account on the first day of the following billing cycle (March 1), the issuer must give notice so that the cardholder has at least 28 days both to make a decision about the renewal of the account and to use the card without having the fee billed to the account. If a cardholder sends timely notice (on February 28) of a decision not to renew the account and the fee is posted before the card issuer receives the notice (for example, March 3), the card issuer will be deemed to be in compliance if the fee is reversed or otherwise withdrawn during the March billing cycle and the cardholder is not required to take any additional action to have the fee removed from the outstanding balance.

9(e)(3) Notification on Periodic Statements

1. Interspersed disclosures. The form of a periodic statement that contains renewal notices must comply with the rules in both § 226.5a and § 226.7. For example, "annual percentage rate" must be printed more conspicuously than other required disclosures to comply with the periodic statement requirements of § 226.7, even though the requirements of § 226.5a would not otherwise require the words to be highlighted. Similarly, the words "grace period" must be used and the name of the balance calculation method must be identified (if listed in §

226.5a(g)) to comply with the requirements of § 226.5a, even though the use of those terms would not otherwise be required for periodic statements under § 226.7.
2. Preprinted notices on periodic statements. A card issuer may preprint the required information on its periodic statements. A card issuer that does so, however, using the advance notice option under § 226.9(e)(1), must make clear on the periodic statement when the preprinted renewal disclosures are applicable. For example, the card issuer could include a special notice (not preprinted) at the appropriate time that the renewal fee will be billed in the following billing cycle, or could show the renewal date as a regular (preprinted) entry on all periodic statements.
14. Comments 9(f)-1 through 9(f)(3)-1 and headings would be added to read as follows:

9(f) Change in Credit Card Account Insurance Provider

1. Coverage. This paragraph applies to credit card accounts of the type subject to § 226.5a if credit insurance (typically life, disability, and unemployment insurance) is offered on the outstanding balance of such an account. (Credit card accounts subject to § 226.9(f) are the same as those subject to § 226.9(e); see comment 9(e)-1.) Charge card accounts are not covered by this paragraph. In addition, the disclosure requirements of this paragraph apply only where the card issuer initiates the change in insurance providers. For example, if the card issuer's current insurance provider is merged into or acquired by another company, these disclosures would not be required. Disclosures also need not be given in cases where card issuers pay for credit insurance themselves and do not separately charge the cardholder.
2. No increase in rate or decrease in coverage. The requirement to provide the disclosure arises when the card issuer changes the provider of insurance, even if there will be no increase in the premium rate charged the consumer and no decrease in coverage under the insurance policy.
3. Form of notice. If a substantial decrease in coverage will result from the change in providers, the card issuer must either explain the decrease or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. (See the commentary to appendix G-13.)
4. Discontinuation of insurance. In addition to stating that the cardholder may cancel the insurance, the card issuer may explain the effect the cancellation would have on the consumer's credit card plan.
5. Mailing by third party. Although the card issuer is responsible for the disclosures, the insurance provider or another third party may furnish the disclosures on the card issuer's behalf.

9(f)(3) Substantial Decrease in Coverage

1. Determination. Whether a substantial decrease in coverage will result from the change in providers is determined by the two-part test in § 226.9(f)(3): first, whether the decrease is in a significant term of coverage; and second, whether the decrease might reasonably be expected to affect a cardholder's decision to continue the insurance. If both conditions are met, the decrease must be disclosed in the notice.

Section 226.12--Special Credit Card Provisions

15. Comment 12(a)(2)-9 would be added to read as follows:

12(a) issuance of Credit Cards

Paragraph 12(a)(2)

9. Multiple entities. Where multiple entities have an arrangement to issue a credit card, none of them may replace the credit card on an unsolicited basis unless the original card is terminated.

Section 226.14--Determination of Annual Percentage Rate

16. The heading to comments under § 226.14(b) would be revised to read as follows:

14(b) Annual Percentage Rate for § 226.5a and § 226.5b Disclosures, for Initial Disclosures and for Advertising Purposes

17. Comment 14(b)-1 would be amended by revising the first sentence to read as follows:
1. Corresponding annual percentage rate computation. For purposes of §§ 226.5a, 226.5b, 226.6 and 226.16, [For initial disclosures (under § 226.6) and for advertising (under § 226.16),] the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year.

Section 226.15--Right of Rescission

18. Comments to 15(a)(3) would be amended by adding two sentences at the end of comment 15(a)(3)-2; and by adding a sentence at the end of comment 15(a)(3)-3 to read as follows:

15(a) Consumer's right to rescind

Paragraph 15(a)(3)

2. Material disclosures. The payment terms set forth in footnote 36 also apply to any repayment phase set forth in an initial agreement. Thus, the payment terms described in section 226.6(e)(2) for any repayment phase as well as for the draw period are "material disclosures.">
3. Material disclosures--variable-rate program. The disclosures listed in footnote 12 to § 226.6(a)(2) for any repayment phase also are material disclosures for variable-rate programs.

Section 226.16--Advertising

19. Comments to 16(b) would be amended by adding parenthetical material at the end of comment 16(b)-2 and by revising the last sentence in comment 16(b)-6 to read as follows:

16(b) Advertisement of terms that require additional disclosures

2. Use of positive terms. (See, however, the rules in § 226.16(d) relating to advertisements for home equity plans.)

6. Discounted variable-rate plans--disclosure of the annual percentage rates. The options listed in comment 16(b)-[4]5 may be used in disclosing the current indexed rate.

20. Comment 16(b)-7 would be revised to read as follows:
7. Triggering terms. The following are examples of terms that trigger additional disclosures:
- "Small monthly service charge on the

remaining balance [."] ," which describes how the amount of a finance charge will be determined.
- "12 percent Annual Percentage Rate [.]" or
[-] "A $15 annual membership fee buys you $2,000 in credit [."] ," which describe required disclosures using a positive numbers.
- "No finance charge until November," or "No finance charge for 90 days," which describe a time period during which credit extended may be repaid without incurring a finance charge.
21. Comments 16(d)-1 through -6 and a heading would be added to read as follows:

16(d) Additional Requirements for Home Equity Plans

1. Trigger terms. Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states "no annual fee" or "no points" in an advertisement, additional information must be provided. References to payment terms include references to the draw period or any repayment period, to the length of the plan, to how the minimum payments are determined and to the timing of such payments. Advertisements for home equity plans must comply with all provisions in § 226.16--not solely the rules in § 226.16(d).
2. References to terms. In providing the information required under this paragraph, the corresponding rules for disclosure of this information apply. For example, fees to open the plan may be stated as a range. (See the commentary to § 226.5b(d)(7) and (8).)
3. Fees to open the plan. Section 226.16(d)(1)(i) requires a disclosure of any fees imposed by the creditor or a third party to open the plan. It does not require a statement of fees to use or maintain the plan. Fees to use or maintain the plan (such as membership fees and transaction charges), however, may be required to be disclosed under § 226.16(b)(1) and (3).
4. Statements of tax deductibility. An adverstisement referring to deductibility for tax purposes is not misleading if it includes a statement such as "consult a tax advisor regarding the deductibility of interest."
5. Misleading terms prohibited. Under § 226.16(d)(5), advertisements may not refer to home equity plans as "free money," or use other misleading terms. For example, an advertisement could not state "no closing costs" if consumers may be required to pay any closing costs, such as recordation fees.
6. Inapplicability of closed-end rules. Advertisements for home equity plans are governed solely by the requirements in section 226.16, and not by the closed-end advertising rules in section 226.24. Thus, if a creditor states payment information about the repayment phase, this will trigger the duty to provide additional information under § 226.16, but not under § 226.24.

Subpart C--Closed-End Credit

Section 26.17--General Disclosure Requirements

22. Comment 17(b)-2 would be amended by revising the first sentence to read as follows:

17(b) Time of disclosures

2. Converting open-end to closed-end

credit. [If] Except for home equity plans subject to § 226.5b in which the agreement provides for a repayment phase, if an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction.

23. Comments to 17(c) would be amended by adding four sentences and parenthetical material at the end of the introductory paragraph of comment 17(c)(1)-4; by adding a fourth bullet paragraph before the last paragraph of comment 17(c)(1)-11; and by adding a new comment 17(c)(1)-17, to read as follows:

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1)

4. Consumer buydowns. The rules regarding consumer buydowns do not apply to transactions known as "lender buydowns." In lender buydowns, a creditor pays an amount (either into an account or to the party to whom the obligation is sold) to reduce the consumer's payments or interest rate for all or a portion of the credit term. Typically, these transactions are structured as a buydown of the interest rate during an initial period of the transaction with a higher than usual rate for the remainder of the term. The disclosures for lender buydowns should be based on the terms of the legal obligation between the consumer and the creditor. (See comment 17(c)(1)-3 for the analogous rules concerning third-party buydowns.)

11. Other variable-rate transactions.

- "Price level adjusted mortgages," or other indexed mortgages, that have a fixed rate of interest but provide for periodic adjustments to payments and loan balance to reflect changes in an index measuring prices or inflation. Disclosures are to be based on the fixed interest rate.

17. Special rules for tax refund anticipation loans. Tax refund loans, also known as refund anticipation loans (RALs), are transactions in which a creditor will lend up to the amount of a consumer's expected tax refund. RAL agreements typically require repayment when the refund is made, and if the refund is less than the payment due, the consumer must pay the difference. Repayment often is made by a pre-authorized offset to a consumer's account held with the creditor when the refund has been deposited by electronic transfer. Creditors typically charge fees for RALs, which may include fees for filing the consumer's tax return electronically. In RAL transactions subject to the regulation:

- If repayment of the loan is required when the refund is delivered (such as by deposit into the consumer's account), the disclosures should be based on the creditor's estimate of the time the refund will be delivered even if the loan also contains a demand clause. (See comment 17(c)(5)-1 for the rules regarding disclosures if the loan is payable solely on demand or is payable either on demand or on an alternate maturity date, as determined by applicable law.)
- If the consumer is required to repay more than the amount borrowed, the difference is finance charge. In addition, to the extent that any fees charged in connection with the loan (such as for

filing the tax return electronically) exceed those fees for a comparable cash transaction (that is, filing the tax return electronically without any loan), the difference should be included in the finance charge.

Section 226.19--Certain Residential Mortgage Transactions

24. Comment 19(a)(1)-3 would be amended by adding parenthetical material after the third sentence to read as follows:

19(a)(1) Time of Disclosure

3. Written application. (See comment 19(b)-3 for the factors to be considered in determining whether or not the transaction involves an intermediary agent or broker.)

25. Comments to 19(b) would be amended by adding parenthetical information after the second sentence and revising the fifth sentence to comment 19(b)-2; by redesignating comments 19(b)-3 and -4 to be comments 19(b)-4 nd -5, respectively; by adding new comment 19(b)-3; and by adding a third bullet before the last sentence of comment 19(b)-5 to read as follows:

19(6) Certain variable-rate transactions

2. Timing. (See comment 19(b)-3 for the factors to be considered in determining whether or not the transaction involves an intermediary agent or broker.) Except for home equity plans subject to § 226.5b in which the agreement provides for a repayment phase, in [In] cases where an open-end credit account will convert to a closed-end transaction subject to this section under a written agreement with the consumer, disclosures under this section may be given at the time of conversion.

3. Intermediary agent or broker. A legal agent of the creditor (as determined by applicable law) is not an "intermediary agent or broker." In determining whether or not a transaction involves an "intermediary agent or broker," the following factors should be considered:

- The percentage of applications submitted by the broker to the creditor as compared to the total number of applications received by the creditor. The greater the percentage of total applications submitted by a broker in any given period of time, the less likely it is that the broker would be considered an "intermediary agent or broker" or the creditor during the next period.
- The percentage of applications submitted by the broker to the creditor as compared to the total number of applications received by the broker. (This factor is applicable only when the creditor has such information.) The greater the percentage of the total loan applications received by the broker that is submitted to a creditor in any given period of time, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor during the next period.
- The amount of work done by the broker on an application (such as negotiationg, processing, and closing). The more work that the broker performs on an application for a creditor (and thus the longer the time the application is held by the broker), the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor.

An example of an "intermediary agent or broker" is a broker who, customarily within a brief time after receiving an application, inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them. During this time, the broker may request a credit report and an appraisal. Furthermore, the broker has been responsible for only a small percentage of the applications received by the creditor.

5. Example of variable-rate transactions. - "Price level adjusted mortgages." or other indexed mortgages, that have a fixed rate of interest but provide for periodic adjustments to payments and loan balance to reflect changes in an index measuring prices or inflation. The disclosures under § 226.19(b)(1) are not applicable to such loans and disclosures concerning changes in the interest rate, such as under § 226.19(b)(2)(viii) and (x), also are not applicable. (See comment 30-1 regarding the inapplicablility of interest rate limitations to price level adjusted mortgages.)

Section 226.23--Right of Rescission

26. Comment 23(f)-8 would be amended by revising the second sentence to read as follows:

23(f) Exempt transactions

8. Converting open-end to closed-end credit. As provided in the commentary to § 226.17(b) concerning transactions not subject to § 226.5b, closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction.

Subpart D--Miscellaneous

Section 226.25--Record Retention

27. Comment 259(a)-4 would be added to read as follows:

25(a) General rule

4. Home equity plans. In home equity plans that are subject to the requirements of § 226.5b, written procedures for compliance with those requirements as well as a sample disclosure form and contract for each home equity program represent adequate evidence of compliance. (See comment 25(a)-2 pertaining to permissible methods of retaining the required disclosures.)

Section 226.28--Effect on State Laws

28. Comments 28(d)-1 through 28(d)-3 and a heading would be added to read as follows:

28(d) Special rule for credit and charge cards

1. General. The standard that applies to preemption of state laws as they affect transactions of the type subject to §§ 226.5a and 226.9(e) differs from the preemption standards generally applicable under the Truth in Lending Act. The Fair Credit and Charge Card Disclosure Act fully preempts state laws relating to the disclosure of credit information in consumer credit or charge card applications or soliciations. For example, a state law requiring disclosure of credit terms in direct mail solicitations for consumer credit card accounts would be preempted. A state law requiring disclosures in telephone applications for consumer credit card accounts also would be preempted, even as it applied to applications initiated by the consumer rather than the issuer, because the state

law relates to the disclosure of credit information in applications or solicitations within the general field of preemption, that is, consumer credit and charge cards.

2. Limitations on field of preemption. Preemption under the Fair Credit and Charge Card Disclosure Act does not extend to state laws applying to types of credit other than open-end consumer credit and charge card accounts. Thus, for example, a state law requiring disclosures in applications and solicitations for credit and charge cards that may be used for both consumer and business purposes would be preempted as it applied to applications and solicitations for consumer-purpose cards, but not as it applied to applications and solicitations for business-purpose cards. (Whether, as a result, the state law would be voided in its entirety would have to be determined under state law.) Preemption under this statute also does not extend to state laws applicable to home equity plans; preemption determinations in this area would be based on the Home Equity Loan Consumer Protection Act, as implemented in § 226.5b of the regulation.

3. Laws not preempted. State laws relating to disclosures concerning credit and charge cards other than in applications, solicitations, or renewal notices are not preempted under § 226.28(d). In addition, state laws regulating the terms of credit and charge card accounts are not preempted, nor are laws preempted that regulate the form or content of information unrelated to the information required to be disclosed under §§ 226.5a and 226.9(e). Finally, state laws concerning the enforcement of the requirements of §§ 226.5a and 226.9(e) and state laws prohibiting unfair or deceptive acts or practices concerning credit and charge card applications, solicitations and renewals are not preempted. Examples of laws that would not be preempted include:

- A state law that requires card issuers to offer a grace period or that prohibits certain fees in credit and charge card transactions.
- A state retail installment sales law or a state plain language law, except to the extent that it regulates the disclosure of credit information in applications, solicitations and renewals of accounts of the type subject to §§ 226.5a and 226.9(e).
- A state law requiring notice of a consumer's rights under antidiscrimination or similar laws or a state law requiring notice about credit information available from state authorities.

Section 226.30--Limitations on Rates

29. Comment 30-1 would be amended by revising the second bullet paragraph; by revising the first sentence in the fourth bullet paragraph; and by adding a sixth bullet paragraph before the last paragraph to read as follows. The paragraph after the second bullet paragraph is republished.

1. Scope of coverage. Examples of credit obligations subject to this section include:

- Dwelling-secured open-end credit plans entered into before November 7, 1989, that are not considered variable-rate obligations for purposes of disclosure under the regulation but where the creditor reserves the contractual right to increase the interest rate--periodic rate and corresponding annual percentage rate--during the term of the plan.

In contrast, credit obligations in which there is no contractual right to increase the interest rate during the term of the obligation are not subject to this section. Examples include:

- Dwelling-secured fixed-rate closed-end balloon-payment mortgage loans and dwelling-secured fixed-rate open-end plans with a stated term that the creditor may [but does not have a legal obligation to,] renew at maturity.
- Price level adjusted mortgages," or other indexed mortgages, that have a fixed rate of interest but provide for periodic adjustments to payments and loan balance to reflect changes in an index measuring prices or inflation.

30. Comment 30-11 would be amended by revising the fourth sentence; by removing the fifth sentence; and by adding a sentence after the fourth sentence, to read as follows:

11. Increasing the maximum interest rate--general rule. Furthermore, where an open-end plan has a fixed maturity and a creditor renews the plan at maturity, [converts the plan to closed-end credit, without having a legal obligation to renew or convert,] or enters into a closed-end credit transaction, a new maximum interest rate may be set at that time. [If, under the initial agreement, the creditor is obligated to renew or convert the plan, the maximum interest rate originally imposed cannot be increased upon renewal or conversion (unless, of course, a new obligation is entered into).] If the open-end plan provides for a repayment phase, the maximum interest rate originally imposed cannot be increased when the repayment phase begins.

Appendix G--Open-End Model Forms and Clauses

33. Comments app. G-5 through app. G-7 would be added to read as follows:

5. Models G-10(A) through 10(C). Models G-10(A) and G-10(B) illustrate the tabular format for providing the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Model G-10(A) illustrates the permissible inclusion in the tabular format of all of the disclosures. Model G-10(B) contains only the disclosures required to be included in the table, while the three additional disclosures are shown outside of the table. The two forms also illustrate two different levels of detail in disclosing the grace period, and different arrangements of the disclosures. Model G-10(C) illustrates the tabular format disclosure for charge card applications and solicitations and reflects all of the disclosures in the table. Disclosures may be arranged in an order different from that in model forms G-10(A), (B), and (C); 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 particular type size. Various features from different model forms may be combined; for example, the shorter grace period disclosure in model form G-10(B) 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 (with an exception relating to the use of "grace period") if they are clear and concise and are substantially similar to the headings and disclosures contained in model forms. For further discussion of requirements relating to form, see the commentary to § 226.5a(a)(2).

6. Models G-11 and G-12. Model G-11 contains clauses that illustrate the general disclosures required under § 226.5a(e) in applications and solicitations made available to the general public. Model G-12 is a model clause for the disclosure required under § 226.5a(f) when a charge card accesses an open-end plan offered by another creditor.

7. Models G-13(A) and G-13(B). These model forms illustrate the disclosures required under § 226.9(f) when the card issuer changes the entity providing insurance on a credit card account. Model G-13(A) contains the items set forth in § 226.9(f)(3) as examples of significant terms of coverage that may be affected by the change in insurance provider. The card issuer may either list all of these potential changes in coverage and place a check mark by the applicable changes, or list only the actual changes in coverage. Under either approach, the card issuer must either explain the changes or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. Model G-13(A) also illustrates the permissible combination of the two notices required by § 226.9(f)--the notice required for a planned change in provider and the notice required once a change has occurred. This form may be modified for use in providing only the disclosure required before the change if the card issuer chooses to send two separate notices. Thus, for example, the references to the attached policy or certificate would not be required in a separate notice prior to a change in the insurance provider since the policy or certificate need not be provided at that time. Model G-13(B) illustrates the disclosures required under § 226.9(f)(2) when the insurance provider is changed.

Board of Governors of the Federal Reserve System, November 15, 1989.

William W. Wiles,

Secretary of the Board.