RULES and REGULATIONS

FEDERAL RESERVE SYSTEM

12 CFR Part 226

Reg. Z; TIL-1
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Truth in Lending; Update to Official Staff Commentary

Monday, April 9, 1990

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation.

SUMMARY: The Board is publishing revisions to the official 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 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 commentary 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 as well as several issues concerning other parts of the regulation.

DATES: Effective April 1, 1990, but compliance optional until October 1, 1990.

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 Disclosure Act issues: Jane Ahrens, Adrienne Hurt, John Wood.

Home Equity Loan Consumer Protection Act issues: Sharon Bowman, Michael Bylsma, Leonard Chanin, Thomas Noto.

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. This update reflects material that was published for comment at 54 FR 48253 (November 22, 1989). Creditors are free to rely on the revised commentary as of April 1, 1990. although they need not follow the revisions until October 1, 1990. (2) 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, Pub. L. 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 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, Pub. L. No. 100-709, 102 Stat. 4725 (HELCPA). (See also the correction notice published July 7, 1989, 54 FR 28665.)

In addition to the issues arising with regard to the FCCCDA and HELPCA, additional revisions are made to other provisions of Regulation Z. For example, the commentary revisions discuss 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 revisions is presented below in the order in which it appears in the commentary. To facilitate review, however, the descriptions of the revisions are presented separately for the credit and charge provisions, the home equity provisions, and the other provisions.

Credit and Charge Card Provisions

The final commentary to the regulation incorporates much of the supplementary information that accompanied the amendments to Regulation Z implementing the FCCCDA. Additional interpretations and interpretations included in the proposed comments that have been revised are noted below.

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

Comments 5a-1 and -2 have been added, respectively, to provide general guidance on the coverage of § 226.5a and to explain that a card issuer may establish procedures so that a single disclosure statement complies with §§ 226.5a and 226.6. (Proposed comment 5a(e)(2)-3 has been incorporated into comment 5a-2.)

5a(a) General Rules

Comment 5a(a)(2)-3 has been revised to emphasize that only the information required or specifically permitted by this section may be disclosed in the required table; any other credit information must appear outside of the table.

5a(b) Required Disclosures

Comment 5a(b)(1)-3 has been revised to further clarify the timing rules for a variable rate disclosure under § 226.5a(d)(2) in telephone applications and solicitations; the rules correspond to those under § 226.6(a)(2). Comment 5a(b)(6)-1 has been revised to emphasize that if a card issuer uses a balance calculation method identified in § 226.5a(g), only the name, and not a description of the method, may be included in the required table.

5a(c) Direct Mail Applications and Solicitations

Comment 5a(c)-1 explains which rules govern applications and solicitations in catalogs and other publications mailed to consumers. Generally, the "take-one" rules apply. Nevertheless, where a primary purpose of a card issuer's mailing is to offer credit or charge card accounts, [for example, where a card issuer mails to a credit-based prescreened list of addressees a catalog containing an application or solicitation,] the direct mail rules apply. The comment also provides further guidance on the use of a single application form for both direct mailings and "take-ones."

5a(g) Balance Computation Methods Defined

Comment 5a(g)-2 has been revised to further explain the "two-cycle average daily balance" method.

Section 226.9--Subsequent Disclosure Requirements

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

The 30-day timing rule stated in the proposal has been changed in comment 9(e)-4 on the disclosure of a variable rate in a renewal notice; the rule now corresponds to the rule under § 226.6(a)(2). Comment 9(e)-6 has been revised primarily to explain that a card issuer must clearly disclose when a cardholder may terminate an account to avoid paying a renewal fee. Comments 9(e)-7 through -9 have been added to provide general guidance on the timing requirements under § 226.9(e). (Interpretations in proposed comment 9(e)(1)-1, which have been revised and simplified, are now included in these comments.) Comment 9(e)-7 provides that where card issuers give renewal notices under § 226.9(e)(1), cardholders must be given the lesser of 30 days or 1 full billing cycle to make a decision about terminating the account; under section 226.9(e)(2)(i), the cardholder has 30 days to make a decision. Comment 9(e)-8 states that notices are provided when mailed or delivered. Comment 9(e)-9 provides that in situations where a cardholder terminates an account and a renewal fee appears on a periodic statement, the card issuer must promptly reverse or withdraw the renewal fee. The comment also emphasizes that once a cardholder terminates an account, no additional action by the cardholder to terminate may be required.

9(e) Notification on Periodic Statements

Comment 9(e)(3)-1 has been revised to give further guidance where renewal notices are combined with periodic statements.

Section 226.28--Effect on State Laws

28(d) Special Rule for Credit and Charge Cards

The position in the proposal on the treatment of "dual purpose" applications for purposes of preemption has been changed. Comments 28(d) -1 and -2 have been revised to explain that a "dual purpose" application or solicitation--that is, one used to open either a card account for consumer purposes or a card account for business purposes--is subject only to the requirements of the federal law.

Home Equity Provisions

Although much of the final commentary is self-explanatory, provisions that have been changed significantly from the proposal are highlighted below. In addition, there are two areas that were discussed in the proposal that are not addressed in the final commentary: the rule relating to delaying detailed disclosures for the repayment period of a home equity plan, and the provision allowing a creditor to suspend advances of credit if the rate cap is reached under the plan. The Board published a notice requesting comment on whether it should delete or revise the regulation relating to these two issues on March 21, 1990 (55 FR 10465). Depending on the resolution of these issues, the Board may make conforming changes to the commentary.

Section 226.5b--Requirements for Home Equity Plans

The commentary to § 226.5b dealing with general coverage differs from the proposed commentary in several respects. First, comment 5b-2 discussing transition rules and renewals of plans entered into before the effective date of the HELCPA has been added, at the request of several commenters. Second, as discussed above, in light of the Board's proposed revision to the rule relating to delayed timing of providing detailed disclosures about any repayment phase of a plan, the proposed commentary provisions discussing that issue have not been retained pending the Board's final action on the issue. Third, additional guidance and examples have been added to comment 5b-4 to discuss the limited circumstances when subpart C applies to home equity plans.

5b(b) Time of Disclosures

Comment 5b(b)-2 includes additional guidance about general purpose applications. It explains that the disclosures and brochure need not accompany general purpose applications provided in response to a consumer's inquiry only about credit other than a home equity plan unless promotional material about home equity plans is included in the mailing.

5b(c) Duties of Third Parties

Comment 5b(c)-1 explains that the creditor is not responsible for ensuring that a third party complies with its obligations under § 226.5b(c).

5b(d) Content of Disclosures

Comment 5b(d)-2 has been added to discuss the duty of creditors to respond to requests from the consumer for information about the plan. The substance of this comment previously was in proposed comments 5b(d)(4)(ii)-1 and 5b(d)(8)- 2. Comment 5b(d)(4)(i)-1 clarifies that fees imposed when a consumer voluntarily closes out an account prior to its scheduled maturity need not be disclosed under that section. Comment 5b(d)(5)(i)-1 clarifies how to disclose the length of a plan when the length is indefinite. More guidance is offered on the types of fees that must be disclosed under § 226.5b(d) (7) and (8), as well as more examples of the type of fees that need not be disclosed. A number of commenters objected to proposed comment 5b(d)(8)-1 that premiums for property insurance required by the creditor must be disclosed in all cases. These commenters argued, among other things, that in many cases insurance already was being carried on the property and that it would be difficult to provide an accurate disclosure in most cases because of the many factors involved in pricing the insurance. In light of these considerations, comment 5b(d)(8)-1 has been revised to permit creditors to disclose either the amount of the premium or the fact that property insurance is required. Comment 5b(d)(9)-1 has been added to provide guidance on when the disclosure concerning negative amortization must be made.

Additional guidance regarding the historical example required under § 226.5b(d)(12)(xi) has been included in the final commentary in response to commenters' suggestions. Comment 5b(d)(12)(xi)-1 explains that the example must be updated as soon as reasonably possible after the latest year's index value becomes available for consistency with the rules for closed-end adjustable-rate mortgages. Comment 5b(d)(12)(xi)-3 includes examples of how to disclose plans with draw and repayment periods of varying lengths in the historical example.

5b(f) Limitations on Home Equity Plans

Comment 5b(f)(2)(ii)-1 clarifies what constitutes failure to meet repayment terms for purposes of the creditor's right to terminate and accelerate. A significant number of commenters objected to the proposed comment on the grounds that the statute and regulation provide that what constitutes failure to make payments should be determined by the agreement between the parties. The final comment has been revised accordingly. Creditors, of course, must comply with any state laws that address any right of the consumer to a right to cure notice, or impose other requirements.

Though creditors are prohibited from changing the margin after a plan is opened, the reference to the margin as a term that need not be disclosed has been omitted from the comment 5b(f)(3)-1 since margins must be provided to the consumer upon request. Comment 5b(f)(3)-2 explains in more detail the basis for allowing creditors to pass on increases in property taxes and charges for property and credit insurance. The Board does not believe that it was intended that creditors absorb bona fide increases in such charges during the life of the plan since taxes are imposed by a government body and are beyond the control of the creditor, and insurance provides benefits apart from the line or is voluntary. Comment 5b(f)(3)(iii)-1 has been revised by deleting the requirement that an advance notice of change in terms be provided when a change is made pursuant to a written agreement between the parties. Under such circumstances, the agreement itself serves as adequate notice. An example has also been added to illustrate the relationship between the general prohibition on unilateral changes and the consumer's ability to agree in writing to a contemporaneous change.

Comment 5b(f)(3)(vi)-4 has been revised to permit a creditor to require that a request for reinstatement of suspended credit privileges be in writing, as long as the consumer is notified of the requirement. Comment 5b(f)(3)(vi)-5 clarifies that a creditor may require all obligors to request reinstatement when credit privileges have been suspended upon the request of one of them.

Comment 5b(f)(3)(vi)-7 clarifies that a material change in financial circumstances exists when a consumer files for bankruptcy. Proposed comment 5b(f)(3)(vi)-10 has not been incorporated in the final commentary since the Board is currently taking comment on a proposal that could delete or revise § 226.5b(f)(3)(vi)(G) of the regulation.

5b(g) Refund of Fees

The reference to insurance premiums in proposed comment 5b(g)-1 has been deleted in the final since it is unlikely that additional insurance would have to be purchased in most transactions. Comment 5b(g)-1 has also been revised to reflect the fact that if there is a change in information provided in response to a request by the consumer pursuant to § 226.5b(d), and the consumer as a result decides to not enter into the plan, the creditor must refund all fees paid.

Section 226.6--Initial Disclosure Statement

6(e) Home Equity Plan Information

Comment 6(e)-1 clarifies that while creditors must disclose a list of the conditions that permit them, for example, to terminate the plan, they need not identify such conditions in the contract in a manner other than is generally required by the format rules in § 226.5(a)(1). Some commenters misunderstood the proposal as imposing a new format rule for this disclosure. Comment 6(e)- 4 is revised to clarify that, to the extent the variable rate information in footnote 12 and the annual percentage rate are the same for the draw and any repayment period, the creditor need not repeat such information as long as the creditor states that the information applies to both phases. Information in the proposal relating to delaying the timing of giving the more detailed repayment disclosures has not been incorporated in the final commentary. Pending final Board action on this issue, the commentary may be revised as appropriate.

Section 226.9--Subsequent Disclosure Requirements

9(c) Change in Terms

Comment 9(c)(1)-6 is revised to reflect that a creditor need not provide advance notice of changes to the terms of a home equity plan if the change is made by written mutual agreement.
Proposed comment 9(c)(3)-1 has been renumbered as 9(c)(3)-2. New comment 9(c)(3)-1 has been added to state that if a creditor requires the consumer to request reinstatement of credit privileges to be in writing, the creditor must state that fact when notifying the consumer of the suspension.

Section 226.15--Right of Rescission

15(a) Consumer's Right to Rescind

Comment 15(a)(3)-2 clarifies that failure by a creditor to give any of the § 226.5b disclosures does not prevent the running of the rescission period, but may result in civil liability or administrative sanctions.

Section 226.16 Advertising

16(d) Additional Requirements for Home Equity Plans

Comment 16(d)-1 is revised to provide

that a statement such as "low fees" does not trigger the need to state additional information. Comment 16(d)-2 is revised to track the disclosure rule in comment 5b(d)(8)-1 with regard to property insurance. Comment 16(d)-5 is revised to clarify the relation of the home equity advertising rules to the other open-end advertising provisions. In particular, it points out that if the creditor is required to state the annual percentage rate under § 226.16(d)--due to the use of a trigger term--the disclosures in § 226.16(b) also would be required to be included in the advertisement.

Other Provisions of Regulation Z

Section 226.12--Special Credit Card Provisions

Comment 12(a)(2)-9 provides 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 commentary clarifies that the entity that issued the card may replace it on an unsolicited basis if it terminates the existing card, but that the other entity may not issue an unsolicited card. (Thus, in this example, the local company could not issue a new card of its own on an unsolicited basis.)
In the proposed commentary update, comment was requested on whether the commentary should be revised so as to permit an additional credit card to be issued on an unsolicited basis by any of the entities in the example described above, even if the original card were not terminated. A few commenters supported such a revision. The Board does not believe that convincing policy reasons have been demonstrated, however, for altering its long-standing "one-for-one" rule.

Section 226.16--Advertising

Comment 16(b)-7 is 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. Comment 16(b)-8 replaces a portion of the proposed revision to comment 16(b)-7, and discusses deferred billing and deferred payment programs. The comment clarifies that a statement regarding when finance charges begin to accrue is a triggering term, but that a statement concerning the deferral of billing or of payment, by itself, will not trigger additional disclosures.

Section 226.17--General Disclosure Requirements

17(c) Basis of Disclosures and Use of Estimates

The proposed comments concerning "price level adjusted mortgages" (PLAMs) are included in the final commentary with minor revisions. (PLAMs have been authorized to be insured by the Department of Housing and Urban Development in a demonstration program.)
Comment 17(c)(1)-17, which introduces special rules for disclosures about income tax refund anticipation loans

(RALs), is revised from the proposal to clarify that the creditor must ignore a demand feature and instead base the disclosures on the estimated date a refund will be delivered to the consumer (such as by direct deposit into the consumer's account) only if, pursuant to the legal obligation, repayment of the loan is required at that time. The final comment also makes clear that a lender's practice of demanding payment when the refund is delivered does not determine what the legal obligation requires; this issue must be resolved according to applicable state or other law. Some commenters assumed that the proposed comment would require RAL lenders in all cases to base the disclosures upon the estimated date a refund would be delivered regardless of the terms of the legal obligation. The comment (both as proposed and revised) is more limited due to the need for consistency with the general requirement that the disclosures reflect the terms of the legal obligation.

Section 226.19--Certain Residential Mortgage Transactions

19(b) Certain Variable-Rate Transactions

Comment 19(b)-3 has been revised to clarify that a creditor may not delay providing disclosures in transactions involving either a legal agent or any other third party that is not an "intermediary agent or broker." The factors provided to determine whether or not a transaction involves an "intermediary agent or broker" have been revised to address commenters' concern that the creditor's knowledge and control of the broker's actions should be determinative. Therefore, the third factor describing the amount of work completed by the broker has been revised to reflect that such knowledge would be based on prior dealings between the creditor and broker and on the creditor's requirements for accepting applications. Comment 19(b)-5 is changed from the proposal to clarify that certain disclosure provisions are inapplicable to PLAMs or similar mortgages only to the extent that they relate to the addition of a margin, changes in the interest rate, or interest rate discounts; those provisions still could apply in other respects.

Section 226.20--Subsequent Disclosure Requirements

20(c) Variable-Rate Adjustments

Comment 20(c)-2 is revised to state that PLAMs or similar mortgages are not subject to the requirements of that section.

List of Subjects in 12 CFR Part 226

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

(3) Text of revisions. Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board amends 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 Pub. L. 100- 583, 102 Stat. 2960; sec. 1204(c), Competitive Equality Banking Act, Pub. L. 100-86, 101 Stat. 552.

2. Supplement I to part 226 is amended as follows:

Subpart A--General

Section 226.2 Definitions and Rules of Construction

1. Comment 2(a)(15)-3 is 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 card" is, however, distinguished from "credit card" in §§ 226.5a, 226.9(e), 226.9(f), and 226.28(d), and appendices G-10 through G-13. When the term "credit card" is used in those provisions, it refers to credit cards other than charge cards.

2. Comment 2(a)(20)-5 is amended by adding parenthetical material before the last sentence of the last paragraph of the comment 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.)

3. Comment 2(a)(24)-6 is added to read as follows:

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

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

Subpart B--Open-End Credit

Section 226.5 General Disclosure Requirements

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

5(b) Time of Disclosures

5(b)(1) Initial disclosures

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.

5. Comments 5a-1 through 5a(g)-2 and

headings are added to read as follows:

Section 226.5a Credit and Charge Card Applications and Solicitations

1. General. Section 226.5a generally requires that credit disclosures be contained in application forms and preapproved solicitations initiated by a card issuer to open a credit or charge card account. (See the commentary to § 226.5a(a)(3) and (e) for exceptions; see also § 226.2(a)(15) and accompanying commentary for the definition of charge card.)
2. Combining disclosures. The initial disclosures required by § 226.6 do not substitute for the disclosures required by § 226.5a; however, a card issuer may establish procedures so that a single disclosure statement meets the requirements of both sections. For example, if a card issuer in complying with § 226.5a(e)(2) provides all the applicable disclosures required under § 226.6, in a form that the consumer may keep and in accordance with the other format and timing requirements for that section, the issuer satisfies the initial disclosure requirements under § 226.6 as well as the disclosure requirements of § 226.5a(e)(2). Or if, in complying with § 226.5a(c) or § 226.5a(d)(2), a card issuer provides an integrated document that the consumer may keep, and provides the § 226.5a disclosures (in a tabular format) along with the additional disclosures required under § 226.6 (presented outside of the table), the card issuer satisfies the requirements of both §§ 226.5a and 226.6.

5a(a) General Rules

5a(a)(2) Form of Disclosures

1. 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. If a tabular format is required to be used, card issuers offering several types of accounts may disclose the various terms for the accounts in a single table or may provide a separate table for each account. Similarly, if rates or other terms vary from state to state, card issuers may list the states and the various disclosures in a single table or in separate tables.
3. Additional information. The table containing the disclosures required by § 226.5a should contain only the information required or permitted by this section. (See the commentary to § 226.5a(b) for guidance on information permitted in the table.) Other credit information may be presented on or with an application or solicitation, provided such information appears outside the required table.
4. Location of certain disclosures. A card issuer has the option of disclosing any of the fees in § 226.5a(b) (8) through (10) in the required table or outside the table.
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 that used in the disclosures under §§ 226.6 and 226.7. This standard requires that the § 226.5a(b) disclosures be close in meaning to those under §§ 226.6 and 226.7; however, the terminology used need not be identical. In addition, § 226.5a(a)(2)(i) requires that the headings, content, and format of the tabular disclosures be substantially

similar, but need not be identical, to the tables in Appendix G. A special rule applies to the grace period disclosure, however: the term "grace period" must be used, either in the heading or in the text of the disclosure.
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 heading "Transaction fee for purchases" and a box showing "none," or the heading and box may be deleted from the table. There is an exception for the grace period disclosure, however: even if no grace period exists, that fact must be stated.

5a(a)(3) Exceptions

1. Coverage. Certain exceptions to the coverage of § 226.5a are stated in § 226.5a(a)(3); in addition, the requirements of § 226.5a do not apply to the following:
- Lines of credit accessed solely by account numbers
- Addition of a credit or charge card to an existing open-end plan
2. Noncoverage of "consumer initiated" requests. Applications provided to a consumer upon request are not covered by § 226.5a, even if the request is made in response to the card issuer's invitation to apply for a card account. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application, the application sent in response to the consumer's request need not contain the disclosures required under § 226.5a. Similarly, if the card issuer invites consumers to call and make an oral application on the telephone, § 226.5a does not apply to the application made by the consumer. If, however, the card issuer calls a consumer or initiates a telephone discussion with a consumer about opening a card account and contemporaneously takes an oral application, such applications are subject to § 226.5a, specifically § 226.5a(d).
3. General purpose applications. The requirements of this section do not apply to general purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account.

5a(a)(5) Certain Fees that Vary by State

1. Manner of disclosing range. If the card issuer discloses a range of fees instead of disclosing the amount of the fee imposed in each state, the range may be stated as the lowest authorized fee (zero, if there are one or more states where no fee applies) to the highest authorized fee.

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

1. Periodic rate. The periodic rate, expressed as such, may be disclosed in the table in addition to the required disclosure of the corresponding annual percentage rate.
2. Variable-rate accounts--definition. For purposes of § 226.5a(b)(1), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the commentary to § 226.6(a)(2) for examples of variable-rate plans.)
3. Variable-rate accounts--rates in effect. For variable-rate disclosures in direct

mail applications and solicitations subject to § 226.5a(c), and in applications and solicitations made available to the general public subject to § 226.5a(e), the rules concerning accuracy of the annual percentage rate are stated in § 226.5a(b)(1)(ii). For variable-rate disclosures in telephone applications and solicitations subject to § 226.5a(d), the card issuer must provide an annual percentage rate currently applicable when oral disclosures are provided under § 226.5a(d)(1). For the alternate disclosures under § 226.5a(d)(2), the card issuer must provide the annual percentage rate in effect at the time the disclosures are mailed or delivered. A rate in effect also includes the rate as of a specified date (which rate is then updated from time to time, for example, each calendar month) or an estimated rate provided in accordance with § 226.5(c).

4. Variable-rate accounts--other disclosures. In describing how the applicable rate will be determined, the card issuer must identify the index or formula and disclose any margin or spread added to the index or formula in setting the rate. The card issuer may disclose the margin or spread as a range of the highest and lowest margins that may be applicable to the account. A disclosure of any applicable limitations on rate increases or decreases may also be included in the table.

5. Introductory rates--discounted rates. If the initial rate is temporary and is lower than the rate that will apply after the temporary rate expires, the card issuer must disclose the annual percentage rate that would otherwise apply to the account. In a fixed-rate account, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the index or formula applicable to the account in accordance with the rules in § 226.5a(b)(1)(ii) and comment 5a(b)(1)-3. An initial discounted rate may be provided in the table along with the rate required to be disclosed if the card issuer also discloses the time period during which the introductory rate will remain in effect.

6. Introductory rates--premium rates. If the initial rate is temporary and is higher than the permanently applicable rate, the card issuer must disclose the initial rate. The issuer may disclose in the table 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 in 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. The following are

examples of fees that should not be disclosed in the table:
- Fees for reissuing a lost or stolen card
- Statement reproduction fees
- Application fees described in § 226.4(c)(1)
4. Waived or reduced fees. If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be provided in the table in addition to the required fees if the card issuer also discloses how long the fees or waivers will remain in effect.
5. Fees stated as annual amount. Fees imposed periodically must be stated as an annual total. For example, if a fee is imposed quarterly, the disclosures would state the total amount of the fees for one year. (See, however, the commentary to § 226.9(e) with regard to disclosure of such fees in renewal notices.)

5a(b)(4) Transaction Charges

1. Charges imposed by person other than card issuer. Charges imposed by a third party, such as a seller of goods, would not be disclosed under this section; the third party would be responsible for disclosing the charge under § 226.9(d)(1).

5a(b)(5) Grace Period

1. How disclosure is made. The card issuer may, but need not, refer to the beginning or ending point of any grace period and briefly state any conditions on the applicability of the grace period. For example, the grace period disclosure might read "30 days" or "30 days from the date of the periodic statement (provided you have paid your previous balance in full by the due date)."

5a(b)(6) Balance Computation Method

1. Form of disclosure. In cases where the card issuer uses a balance calculation method that is identified by name in the regulation, the card issuer may only disclose the name of the method in the table. In cases where the card issuer uses a balance computation method that is not identified by name in the regulation, the disclosure in the table should clearly explain the method in as much detail as set forth in the descriptions of balance methods in section 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.6(a)(3). (See the commentary to § 226.5a(g) for guidance on particular methods.)
2. Determining the method. In determining the appropriate balance computation method for purchases for disclosure purposes, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method will include new purchases or cover two billing cycles only if purchase balances are not paid within the grace period, the card issuer would disclose the name of the average daily balance method that includes new purchases or covers two billing cycles, respectively. The card issuer should not assume the existence of a purchase balance, however, in making other disclosures under § 226.5a(b).

5a(b)(7) Statement on Charge Card Payments

1. Applicability and content. The disclosure that charges are payable upon receipt of the periodic statement is applicable only to charge card accounts. In making this disclosure, the card issuer

may make such modifications as are necessary to more accurately reflect the circumstances of repayment under the account. For example, the disclosure might read, "Charges are due and payable upon receipt of the periodic statement and must be paid no later than 15 days after receipt of such statement."

5a(b)(8) Cash Advance Fee

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

5a(b)(9) Late Payment Fee

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

5a(b)(10) Over-the-Limit Fee

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

5a(c) Direct Mail Applications and Solicitations

1. Accuracy. In general, disclosures in direct mail applications and solicitations must be accurate as of the time of mailing. (An accurate variable annual percentage rate is one in effect within 30 days before mailing.)
2. Mailed publications. Applications or solicitations contained in generally available publications mailed to consumers (such as subscription magazines) are subject to the requirements applicabIe to "take-ones" in § 226.5a(e), rather than the direct mail requirements of § 226.5a(c). However, if a primary purpose of a card issuer's mailing is to offer credit or charge card accounts-- for example, where a card issuer "prescreens" a list of potential cardholders using credit criteria, and then mails to the targeted group its catalog containing an application or a solicitation for a card account--the direct mail rules apply. In addition, a card issuer may use a single application form as a "take-one" (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of § 226.5a(c) even when the form is used as a "take-one"--that is, by providing current information and presenting the required disclosures in a tabular format--and eliminates the information required under § 226.5a(e)(1) (ii) and (iii).

5a(d) Telephone Applications and Solicitations

1. Coverage. This paragraph applies if:
- A telephone conversation between a card issuer and consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not

require any application (that is, a "preapproved" telephone solicitation).
- The card issuer initiates the contact and at the same time takes application information over the telephone.

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

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

1. Coverage. Applications and solicitations made available to the general public include what are commonly referred to as "take-one" applications typically found at counters in banks and retail establishments, as well as applications contained in catalogs, magazines and other generally available publications. In the case of credit unions, this paragraph applies to applications and solicitations to open card accounts made available to those in the general field of membership.
2. Cross-selling. If a card issuer invites a consumer to apply for a credit or charge card (for example, where the issuer engages in cross-selling), an application provided to the consumer at the consumer's request is not considered an application made available to the general public and therefore is not subject to § 226.5a(e). For example, the following are not covered:
- A consumer applies in person for a car loan at a financial institution and the loan officer invites the consumer to apply for a credit or charge card account; the consumer accepts the invitation.
- An employee of a retail establishment, in the course of processing a sales transaction using a bank credit card, asks a customer if he or she would like to apply for the retailer's credit or charge card; the customer responds affirmatively.

3. Toll-free telephone number. If a card issuer, in complying with any of the disclosure options of § 226.5a(e), provides a telephone number for consumers to call to obtain credit information, the number must be toll-free for nonlocal calls made from an area code other than the one used in the card issuer's dialing area. Alternatively, a card issuer may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

5a(e)(1) Disclosure of Required Credit Information

1. Date of printing. Disclosure of the month and year fulfills the requirement to disclose the date an application was printed.
2. Form of disclosures. The disclosures specified in § 226.5a(e) (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. (A current variable annual percentage rate would be one in effect within 30 days before printing.)

5a(e)(3) No Disclosure of Credit Information

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

5a(e)(4) Prompt Response to Requests for Information

1. Prompt disclosure. Information is promptly disclosed if it is given within 30 days of a consumer's request for information but in no event later than delivery of the credit or charge card.
2. Information disclosed. When a consumer requests credit information, card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with § 226.5a(e) (1) or (2) and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the issuer need only provide the items of information that have changed from those previously disclosed on or with the application or solicitation. If a consumer requests information about particular items, the card issuer need only provide the requested information. If, however, the card issuer has made disclosures in accordance with the option in § 226.5a(e)(3) and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information must be given.
3. Manner of response. A card issuer's response to a consumer's request for credit information may be provided orally or in writing, regardless of the manner in which the consumer's request is received by the issuer. Furthermore, the card issuer may provide the information listed in either § 226.5a(e) (1) or (2). Information provided in writing need not be in a tabular format.

5a(f) Special Charge Card Rule--Card Issuer and Person Extending Credit Not the Same Person

1. Duties of charge card issuer. Although the charge card issuer is not required to disclose information about the underlying open-end credit plan if the card issuer meets the conditions set forth in § 226.5a(f), the card issuer must disclose the information relating to the charge card plan itself.
2. Duties of creditor maintaining open-end plan. Section 226.5a does not impose disclosure requirements on the creditor that maintains the underlying open-end credit plan. This is the case even though the creditor offering the open-end credit plan may be considered an agent of the charge card issuer. (See comment 2(a)(7)-1.)
3. Form of disclosures. The disclosures required by § 226.5a(f) may appear either in or outside the table containing

the required credit disclosures in circumstances where a tabular format is required.

5a(g) Balance Computation Methods Defined

1. Daily balance method. Card issuers using the daily balance method may disclose it using the name "average daily balance (including new purchases)" or "average daily balance (excluding new purchases)," as appropriate. Alternatively, such card issuers may explain the method. (See comment 7(e)-5 for a discussion of the daily balance method.)
2. Two-cycle average daily balance methods. The "two-cycle average daily balance" methods described in § 226.5a(g)(2) (i) and (ii) include those methods in which the average daily balances for two billing cycles may be added together to compute the finance charge. Such methods also include those in which a periodic rate is applied separately to the balance in each cycle, and the resulting finance charges are added together. The method is a "two-cycle average daily balance" even if the finance charge is based on both the current and prior cycle balances only under certain circumstances, such as when purchases during a prior cycle were carried over into the current cycle and no finance charge was assessed during the prior cycle. Furthermore, the method is a "two-cycle average daily balance method" if the balances for both the current and prior cycles are average daily balances, even if those balances are figured differently. For example, the name "two-cycle average daily balance (excluding new purchases)" should be used to describe a method in which the finance charge for the current cycle, figured on an average daily balance excluding new purchases, will be added to the finance charge for the prior cycle, figured on an average daily balance of only new purchases during that prior cycle.
6. Comments 5b-1 through 5b(h)-3 and headings are 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. Transition rules and renewals of preexistinq plans. The requirements of this section do not apply to home equity plans entered into before November 7, 1989. The requirements of this section also do not apply if the original consumer, on or after November 7, 1989, renews a plan entered into prior to that date (with or without changes to the terms). If, on or after November 7, 1989, a security interest in the consumer's dwelling is added to a line of credit entered into before that date, the substantive restrictions of this section apply for the remainder of the plan, but no new disclosures are required under this section.
3. Disclosure of repayment phase--applicability of requirements. Some plans provide in the initial agreement for a period during which no further draws may be taken and repayment of the amount borrowed is made. All of the

applicable disclosures in this section must be given for the repayment phase. Thus, for example, a creditor must provide payment information about the repayment phase as well as about the draw period, as required by § 226.5b(d)(5). If the rate that will apply during the repayment phase is fixed at a known amount, the creditor must provide an annual percentage rate under § 226.5b(d)(6) for that phase. If, however, a creditor uses an index to determine the rate that will apply at the time of conversion to the repayment phase--even if the rate will thereafter be fixed--the creditor must provide the information in § 226.5b(d)(12), as applicable.

4. Payment terms--applicability of closed-end provisions and substantive rules. All payment terms that are provided for in the initial agreement are subject to the requirements of subpart B and not subpart C of the regulation. Payment terms that are subsequently added to the agreement may be subject to subpart B or to subpart C, depending on the circumstances. The following examples apply these general rules to different situations:

- If the initial agreement provides for a repayment phase or for other payment terms such as options permitting conversion of part or all of the balance to a fixed rate during the draw period, these terms must be disclosed pursuant to §§ 226.5b and 226.6, and not under subpart C. Furthermore, the creditor must continue to provide periodic statements under § 226.7 and comply with other provisions of subpart B (such as the substantive requirements of § 226.5b(f)) throughout the plan, including the repayment phase.
- If the consumer and the creditor enter into an agreement during the draw period to repay all or part of the principal balance on different terms (for example, with a fixed rate of interest) and the amount of available credit will be replenished as the principal balance is repaid, the creditor must continue to comply with subpart B. For example, the creditor must continue to provide periodic statements and comply with the substantive requirements of § 226.5b(f) throughout the plan.
- If the consumer and creditor enter into an agreement during the draw period to repay all or part of the principal balance and the amount of available credit will not be replenished as the principal balance is repaid, the creditor must give closed-end credit disclosures pursuant to subpart C for that new agreement. In such cases, subpart B, including the substantive rules, does not apply to the closed-end credit transaction, although it will continue to apply to any remaining open-end credit available under the plan.

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 an open-end plan are subject to the rules applicable to home equity plans to the same degree as if a security interest were taken directly to secure the plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.

5b(a) Form of Disclosures

5b(a)(1) General

1. Written disclosures. The disclosures required under this section must be clear

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

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

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

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

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

4. Method of providing disclosures. A creditor may provide a single disclosure form for all of its home equity plans, as long as the disclosure describes all aspects of the plans. For example, if the creditor offers several payment options, all such options must be disclosed. (See, however, the commentary to § 226.5b(d)(5)(iii) and (d)(12) (x) and (xi) for disclosure requirements relating to these provisions.) If any aspects of a plan are linked together, the creditor must disclose clearly the relationship of the terms to each other. For example, if the consumer can only obtain a particular payment option in conjunction with a certain variable-rate feature, this fact must be disclosed. A creditor has the option of providing separate disclosure forms for multiple options or variations in features. For example, a creditor that offers different payment options for the draw period may prepare separate disclosure forms for the two payment options. A creditor using this alternative, however, must include a statement on each disclosure form that the consumer should ask about the creditor's other home equity programs. (This disclosure is required only for those programs available generally to the public. Thus, if the only other programs available are employee preferred-rate plans, for example, the creditor would not have to provide this statement.) A creditor that receives a request for information about other available programs must provide the additional disclosures as soon as reasonably possible.

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

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

5b(b) Time of Disclosures

1. Mail and telephone applications. If the creditor sends applications through the mail, the disclosures and a brochure must accompany the application. If an application is taken over the telephone, the disclosures and brochure may be delivered or mailed within three business days of taking the application. If an

application is mailed to the consumer following a telephone request, however, the creditor also must send the disclosures and a brochure along with the application.

2. General purpose applications. The disclosures and a brochure need not be provided when a general purpose application is given to a consumer unless (1) the application or materials accompanying it indicate that it can be used to apply for a home equity plan or (2) the application is provided in response to a consumer's specific inquiry about a home equity plan. On the other hand, if a general purpose application is provided in response to a consumer's specific inquiry only about credit other than a home equity plan, the disclosures and brochure need not be provided even if the application indicates it can be used for a home equity plan, unless it is accompanied by promotional information about home equity plans.

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

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

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

6. Intermediary agent or broker. In determining whether or not an application involves an "intermediary agent or broker" as discussed in footnote 10a, creditors should consult the provisions in comment 19(b)-3.

5b(c) Duties of Third Parties

1. Disclosure requirements. Although third parties who give applications to consumers for home equity plans must provide the brochure required under § 226.5b(e) in all cases, such persons need provide the disclosures required under § 226.5b(d) only in certain instances. A third party has no duty to obtain disclosures about a creditor's home equity plan or to create a set of disclosures based on what it knows about a creditor's plan. If, however, a creditor provides the third party with disclosures along with its application form, the third party must give the disclosures to the consumer with the application form. The duties under this section are those of the third party; the creditor is not responsible for ensuring that a third party complies with those obligations. If an intermediary agent or broker takes an application over the telephone or receives an application contained in a magazine or other publication, footnote 10a permits that person to mail the disclosures and

brochure within three business days of receipt of the application. (See the commentary to § 226.5b(h) about imposition of nonrefundable fees.)

5b(d) Content of Disclosures

1. Disclosures given as applicable. The disclosures required under this section need be made only as applicable. Thus, for example, if negative amortization cannot occur in a home equity plan, a reference to it need not be made.
2. Duty to respond to requests for information. If the consumer, prior to the opening of a plan, requests information as suggested in the disclosures (such as the current index value or margin), the creditor must provide this information as soon as reasonably possible after the request.

5b(d)(1) Retention of Information

1. When disclosure not required. The creditor need not disclose that the consumer should make or otherwise retain a copy of the disclosures if they are retainable--for example, if the disclosures are not part of an application that must be returned to the creditor to apply for the plan.

5b(d)(2) Conditions for Disclosed Terms

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

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

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

1. Relation to other provisions. Creditors should consult the rules in § 226.5b(g) regarding refund of fees.

5b(d)(4) Possible Actions by Creditor

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

1. Fees imposed upon termination. This disclosure applies only to fees (such as penalty or prepayment fees) that the creditor imposes if it terminates the plan prior to normal expiration. The disclosure does not apply to fees that are imposed either when the plan expires in accordance with the agreement or if the consumer terminates the plan prior to its scheduled maturity. In addition, the disclosure does not apply to fees associated with collection of the debt, such as attorneys fees and court costs, or to increases in the annual percentage rate linked to the consumer's failure to make payments. The actual amount of the fee need not be disclosed.

2. Changes specified in the initial agreement. If changes may occur pursuant to § 226.5b(f)(3)(i), a creditor must state that certain changes will be implemented as specified in the initial agreement.

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

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

5b(d)(5) Payment Terms

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

1. Length of the plan. The combined length of the draw period and any repayment period need not be stated. If the length of the repayment phase cannot be determined because, for example, it depends on the balance outstanding at the beginning of the repayment period, the creditor must state that the length is determined by the size of the balance. If the length of the plan is indefinite (for example, because there is no time limit on the period during which the consumer can take advances), the creditor must state that fact.
2. Renewal provisions. If, under the credit agreement, a creditor retains the right to review a line at the end of the specified draw period and determine whether to renew or extend the draw period of the plan, the possibility of renewal or extension--regardless of its likelihood--should be ignored for purposes of the disclosures. For example, if an agreement provides that the draw period is five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years. (See the commentary accompanying § 226.9(c)(1) dealing with change in terms requirements.)

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

1. Determination of the minimum periodic payment. This disclosure must reflect how the minimum periodic payment is determined, but need only describe the principal and interest components of the payment. Other charges that may be part of the payment (as well as the balance computation method) may, but need not, be described under this provision.

2. Fixed rate and term payment options during draw period. If the home equity plan permits the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period, this feature must be disclosed. To illustrate. a variable-rate plan may permit a consumer to elect during a ten-year draw period to repay all or a portion of the balance over a three-year period at a fixed rate. The creditor must disclose the rules relating to this feature including the period during which the option can be selected, the length of time over which repayment can occur, any fees imposed for such a feature, and the specific rate or a description of the index and margin that will apply upon exercise of this choice. For example, the index and margin disclosure might state. "If you choose to convert any portion of your balance to a fixed rate, the rate will be the highest prime rate published in the "Wall Street Journal" that is in effect at the date of conversion plus a margin." If the fixed rate is to be determined according to an index, it must be one that is outside the creditor's control and is publicly available in accordance with § 226.5b(f)(1). The effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example required in § 226.5b(d)(12)(xi).

3. Balloon payments. In programs where the occurrence of a balloon payment is possible, the creditor must disclose the possibility of a balloon payment even if such a payment is uncertain or unlikely. In such cases, the disclosure might read, "Your minimum payments may not be sufficient to fully repay the principal that is outstanding on your line. If they are not, you will be required to pay the entire outstanding balance in a single payment." In programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must state that fact. For example, the disclosure might read, "Your minimum payments will not repay the principal that is outstanding on your line. You will be required to pay the entire outstanding balance in a single payment." In making this disclosure, the creditor is not required to use the term "balloon payment." The creditor also is not required to disclose the amount of the balloon payment. (See, however, the requirement under § 226.5b(d)(5)(iii).) The balloon payment disclosure does not apply in cases where repayment of the entire outstanding balance would occur only as a result of termination and acceleration. The creditor also need not make a disclosure about balloon payments if the final payment could not be more than twice the amount of other minimum payments under the plan.

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

1. Minimum periodic payment example. In disclosing the payment example, the creditor may assume that the credit limit as well as the outstanding balance is $10,000 if such an assumption is relevant to calculating payments. (If the creditor only offers lines of credit for less than $10,000, the creditor may assume an outstanding balance of $5,000 instead of $10,000 in making this disclosure.) The example should reflect the payment comprised only of principal and interest. Creditors may provide an additional example reflecting other charges that may be included in the payment, such as credit insurance premiums. Creditors may assume that all months have an equal number of days,

that payments are collected in whole cents, and that payments will fall on a business day even though they may be due on a non-business day. For variable-rate plans, the example must be based on the last rate in the historical example required in § 226.5b(d)(12)(xi), or a more recent rate. In cases where the last rate shown in the historical example is different from the index value and margin (for example, due to a rate cap), creditors should calculate the rate by using the index value and margin. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.

2. Representative examples. In plans with multiple payment options within the draw period or within any repayment period, the creditor may provide representative examples as an alternative to providing examples for each payment option. The creditor may elect to provide representative payment examples based on three categories of payment options. The first category consists of plans that permit minimum payment of only accrued finance charges ("interest only" plans). The second category includes plans in which a fixed percentage or a fixed fraction of the outstanding balance or credit limit (for example, 2% of the balance or 1/180 th of the balance) is used to determine the minimum payment. The third category includes all other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges. Creditors may classify their minimum payment arrangements within one of these three categories even if other features exist, such as varying lengths of a draw or repayment period, required payment of past due amounts, late charges, and minimum dollar amounts. The creditor may use a single example within each category to represent the payment options in that category. For example, if a creditor permits minimum payments of 1%, 2%, 3% or 4% of the outstanding balance, it may pick one of these four options and provide the example required under § 226.5b(d)(5)(iii) for that option alone. The example used to represent a category must be an option commonly chosen by consumers, or a typical or representative example. (See the commentary to § 226.5b(d)(12) (x) and (xi) for a discussion of the use of representative examples for making those disclosures. Creditors using a representative example within each category must use the same example for purposes of the disclosures under § 226.5b (d)(5)(iii) and (d)(12) (x) and (xi).) Creditors may use representative examples under § 226.5b(d)(5) only with respect to the payment example required under paragraph (d)(5)(iii). Creditors must provide a full narrative description of all payment options under § 226.5b(d)(5) (i) and (ii).

3. Examples for draw and repayment periods. Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods. In setting forth payment examples for any repayment period under this section (and the historical example under § 226.5b(d)(12)(xi)), creditors should assume a $10,000 advance is taken at the beginning of the draw period and is reduced according to the terms of the plan. Creditors should not assume an additional advance is taken at any time, including at the beginning of any repayment period.

4. Reverse mortgages. Reverse mortgages, also known as reverse

annuity or home equity conversion mortgages, in addition to permitting the consumer to obtain advances, may involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the reverse mortgage (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these plans, creditors must apply the following rules, as applicable:

- If the reverse mortgage has a specified period for advances and disbursements but repayment is due only upon occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the line at the time the draw period and our payments to you end. As provided in your agreement, your repayment may be rquired at a different time." The single payment should be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The example of the minimum payment under § 226.5b(d)(5)(iii) should assume a single $10,000 draw.
- If the reverse mortgage has neither a specified period for advances or disbursements nor a specified repayment date and these terms will be determined solely by reference to future events, including the consumer's death, the creditor may assume that the draws and disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)
- In making the disclosures, the creditor must assume that all draws and disbursements and accrued interest will be paid by the consumer. For example, if the note has a non-recourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be drawn or disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement."
- Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The 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, fees to obtain checks to access the plan, and fees imposed for converting to a repayment phase that is provided for in the original agreement. This disclosure includes any fees that are imposed by the creditor to use or maintain the plan, whether the fees are kept by the creditor or a third party. For example, if a creditor requires an annual credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be specifically stated. Third party fees to open the plan that are initially paid by the consumer to the creditor may be included in this disclosure or in the disclosure under § 226.5b(d)(8).
2. Manner of describing fees. Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit. The creditor may provide a stepped fee schedule in which a fee will increase a specified amount at a specified date. (See the discussion contained in the commentary to § 226.5b(f)(3)(i).)
3. Fees not required to be disclosed. Fees that are not imposed to open, use, or maintain a plan, such as fees for researching an account, photocopying, paying late, stopping payment, having a check returned, exceeding the credit limit, or closing out an account do not have to be disclosed under this section. Credit report and appraisal fees imposed to investigate whether a condition permitting a freeze continues to exist--as discussed in the commentary to § 226.5b(f)(3)(vi)--are not required to be disclosed under this section or § 226.5b(d)(8).
4. Rebates of closing costs. If closing costs are imposed they must be disclosed, regardless of whether such costs may be rebated later (for example, rebated to the extent of any interest paid during the first year of the plan).
5. Terms used in disclosure. Creditors need not use the terms "finance charge" or "other charge" in describing the fees imposed by the creditor under this section or those imposed by third parties under § 226.5b(d)(8).

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

1. Applicability. Section 226.5b(d)(8) applies only to fees imposed by third parties to open the plan. Thus, for example, this section does not require disclosure of a fee imposed by a government agency at the end of a plan to release a security interest. Fees to be disclosed include appraisal, credit report, government agency, and attorneys fees. In cases where property insurance is required by the creditor, the creditor either may disclose the amount of the premium or may state that property insurance is required. For example, the disclosure might state, "You must carry insurance on the property that secures this plan."

2. Itemization of third party fees. In all cases creditors must state the total of third party fees as a single dollar amount or a range. A creditor has two options with regard to providing the more detailed information about third party fees. Creditors may provide a statement that the consumer may request more specific cost information about third party fees from the creditor. As an alternative to including this statement, creditors may provide an itemization of such fees (by type and amount) with the early disclosures.
3. Manner of describing fees. A good faith estimate of the amount of fees must be provided. Creditors may provide, based on a typical or representative amount of credit, a range for such fees or state the dollar amount of such fees. Fees may be expressed on a unit cost basis, for example, $5 per $1,000 of credit.
4. Rebates of third party fees. Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to § 226.5b(d)(7).)

5b(d)(9) Negative Amortization

1. Disclosure required. In transactions where the minimum payment will not or may not be sufficient to cover the interest that accrues on the outstanding balance, the creditor must disclose that negative amortization will or may occur. This disclosure is required whether or not the unpaid interest is added to the outstanding balance upon which interest is computed. A disclosure is not required merely because a loan calls for non-amortizing or partially amortizing payments.

5b(d)(10) Transaction Requirements

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

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

1. Variable-rate provisions. Sample forms in Appendix G-14 provide illustrative guidance on the variable-rate rules.

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

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

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

1. Preferred-rate provisions. This paragraph requires disclosure of preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor.
2. Provisions on conversion to fixed rates. The commentary to § 226.5b(d)(5)(ii) discusses the disclosure requirements for options permitting the consumer to convert from a variable rate to a fixed rate.

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

1. Periodic limitations on increases in rates. The creditor must disclose any annual limitations on increases in the

annual percentage rate. If the creditor bases its rate limitation on 12 monthly billing cycles, such a limitation should be treated as an annual cap. Rate limitations imposed on less than an annual basis must be stated in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, this must be expressed as a rate limitation for a six-month time period. If the creditor does not impose periodic limitations (annual or shorter) on rate increases, the fact that there are no annual rate limitations must be stated.

2. Maximum limitations on increases in rates. The maximum annual percentage rate that may be imposed under each payment option over the term of the plan (including the draw period and any repayment period provided for in the initial agreement) must be provided. The creditor may disclose this rate as a specific number (for example, 18%) or as a specific amount above the initial rate. For example, this disclosure might read, "The maximum annual percentage rate that can apply to your line will be 5 percentage points above your initial rate." If the creditor states the maximum rate as a specific amount above the initial rate, the creditor must include a statement that the consumer should inquire about the rate limitations that are currently available. If an initial discount is not taken into account in applying maximum rate limitations, that fact must be disclosed. If separate overall limitations apply to rate increases resulting from events such as the exercise of a fixed-rate conversion option or leaving the creditor's employ, those limitations also must be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations.

3. Form of disclosures. The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest periodic and maximum rate limitations that may be applicable to the creditor's home equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.

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

1. Maximum rate payment example. In calculating the payment creditors should assume the maximum rate is in effect. Any discounted or premium initial rates or periodic rate limitations should be ignored for purposes of this disclosure. If a range is used to disclose the maximum cap under § 226.5b(d)(12)(ix), the highest rate in the range must be used for the disclosure under this paragraph. As an alternative to making disclosures based on each payment option, the creditor may choose a representative example within the three categories of payment options upon which to base this disclosure. (See the commentary to § 226.5b(d)(5).) However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods. Creditors should calculate the example for the repayment period based on an assumed $10,000 balance. (See the commentary to § 226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

2. Time the maximum rate could be reached. In stating the date or time when the maximum rate could be reached,

creditors should assume the rate increases as rapidly as possible under the plan. In calculating the date or time, creditors should factor in any discounted or premium initial rates and periodic rate limitations. This disclosure must be provided for the draw phase and any repayment phase. Creditors should assume the index and margin shown in the last year of the historical example (or a more recent rate) is in effect at the beginning of each phase.

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

1. Index movement. Index values and annual percentage rates must be shown for the entire 15 years of the historical example and must be based on the most recent 15 years. The example must be updated annually to reflect the most recent 15 years of index values as soon as reasonably possible after the new index value becomes available. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values have been available and may start the historical example at the year for which values are first available.
2. Selection of index values. The historical example must reflect the method of choosing index values for the plan. For example, if an average of index values is used in the plan, averages must be used in the example, but if an index value as of a particular date is used, a single index value must be shown. The creditor is required to assume one date (or one period, if an average is used) within a year on which to base the history of index values. The creditor may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the example. Only one index value per year need be shown, even if the plan provides for adjustments to the annual percentage rate or payment more than once in a year. In such cases, the creditor can assume that the index rate remained constant for the full year for the purpose of calculating the annual percentage rate and payment.
3. Selection of margin. A value for the margin must be assumed in order to prepare the example. A creditor may select a representative margin that it has used with the index during the six months preceding preparation of the disclosures and state that the margin is one that it has used recently. The margin selected may be used until the creditor annually updates the disclosure form to reflect the most recent 15 years of index values.
4. Amount of discount or premium. In reflecting any discounted or premium initial rate, the creditor may select a discount or premium that it has used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the example for as long as it is in effect. The creditor may assume that a discount or premium that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example.
5. Rate limitations. Limitations on both periodic and maximum rates must be reflected in the historical example. If ranges of rate limitations are provided under § 226.5b(d)(12)(ix), the highest rates provided in those ranges must be used in the example. Rate limitations that may apply more often than annually should be treated as if they were annual limitations. For example, if a creditor

imposes a 1% cap every six months, this should be reflected in the example as if it were a 2% annual cap.

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

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

8. Payment information. The payment figures in the historical example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted initial rate, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have applied to the plan. The historical example should include payments for as much of the length of the plan as would occur during a 15-year period. For example:

- If the draw period is 10 years and the repayment period is 15 years, the example should illustrate the entire 10-year draw period and the first 5 years of the repayment period.
- If the length of the draw period is 15 years and there is a 15-year repayment phase, the historical example must reflect the payments for the 15- year draw period and would not show any of the repayment period. No additional historical example would be required to reflect payments for the repayment period.
- If the length of the plan is less than 15 years, payments in the historical example need only be shown for the number of years in the term. In such cases, however, the creditor must show the index values, margin and annual percentage rates and continue to reflect all significant plan terms such as rate limitations for the entire 15 years.

A creditor need show only a single payment per year in the example, even though payments may vary during a year. The calculations should be based on the actual payment computation formula, although the creditor may assume that all months have an equal number of days. The creditor may assume that payments are made on the last day of the billing cycle, the billing date or the payment due date, but must be consistent in the manner in which the period used to illustrate payment information is selected. Information about balloon payments and remaining balance may, but need not, be reflected in the example.

9. Disclosures for repayment period. The historical example must reflect all features of the repayment period, including the appropriate index values, margin, rate limitations, length of the repayment period, and payments. For example, if different indices are used during the draw and repayment periods, the index values for that portion of the 15 years that reflect the repayment period must be the values for the appropriate index.

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

5b(e) Brochure

1. Substitutes. A brochure is a suitable substitute for the Board's home equity brochure if it is, at a minimum, comparable to the Board's brochure in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the Board's brochure.
2. Effect of third party delivery of brochure. If a creditor determines that a third party has provided a consumer with the required brochure pursuant to § 226.5b(c), the creditor need not give the consumer a second brochure.

5b(f) Limitations on Home Equity Plans

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

Paragraph 5b(f)(1)

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

Paragraph 5b(f)(2)

1. Limitations on termination and acceleration. In general, creditors are prohibited from terminating and accelerating payment of the outstanding balance before the scheduled expiration of a plan. However, creditors may take these actions in the three circumstances specified in § 226.5b(f)(2). Creditors are not permitted to specify in their contracts any other events that allow termination and acceleration beyond those permitted by the regulation. Thus, for example, an agreement may not provide that the balance is payable on demand nor may it provide that the account will be terminated and the balance accelerated if

the rate cap is reached.
2. Other actions permitted. If an event permitting termination and acceleration occurs, a creditor may instead take actions short of terminating and accelerating. For example, a creditor could temporarily or permanently suspend further advances, reduce the credit limit, change the payment terms, or require the consumer to pay a fee. A creditor also may provide in its agreement that a higher rate or higher fees will apply in circumstances under which it would otherwise be permitted to terminate the plan and accelerate the balance. A creditor that does not immediately terminate an account and accelerate payment or take another permitted action may take such action at a later time, provided one of the conditions permitting termination and acceleration exists at that time.

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

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

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

1. Failure to meet repayment terms. A creditor may terminate a plan and accelerate the balance when the consumer fails to meet the repayment terms provided for in the agreement. However, a creditor may terminate and accelerate under this provision only if the consumer actually fails to make payments. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under this provision if the consumer fails to meet the repayment terms of the agreement. This section does not override any state or other law that requires a right-to-cure notice, or otherwise places a duty on the creditor before it can terminate a plan and accelerate the balance.

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

1. Impairment of security. A creditor may terminate a plan and accelerate the balance if the consumer's action or inaction adversely affects the creditor's security for the plan, or any right of the creditor in that security. Action or inaction by third parties does not, in itself, permit the creditor to terminate and accelerate.
2. Examples. A creditor may terminate and accelerate, for example, if:
- The consumer transfers title to the property or sells the property without the permission of the creditor
- The consumer fails to maintain required insurance on the dwelling
- The consumer fails to pay taxes on the property
- The consumer permits the filing of a lien senior to that held by the creditor
- The sole consumer obligated on the plan dies
- The property is taken through eminent

domain
- A prior lienholder forecloses

By contrast, the filing of a judgment against the consumer would permit termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. If the consumer commits waste or otherwise destructively uses or fails to maintain the property such that the action adversely affects the security, the plan may be terminated and the balance accelerated. Illegal use of the property by the consumer would permit termination and acceleration if it subjects the property to seizure. If one of two consumers obligated on a plan dies the creditor may terminate the plan and accelerate the balance if the security is adversely affected. If the consumer moves out of the dwelling that secures the plan and that action adversely affects the security, the creditor may terminate a plan and accelerate the balance.

Paragraph 5b(f)(3)

1. Scope of provision. In general, a creditor may not change the terms of a plan after it is opened. For example, a creditor may not increase any fee or impose a new fee once the plan has been opened, even if the fee is charged by a third party, such as a credit reporting agency, for a service. The change of terms prohibition applies to all features of a plan, not only those required to be disclosed under this section. For example, this provision applies to charges imposed for late payment, although this fee is not required to be disclosed under § 226.5b(d)(7).
2. Charges not covered. There are three charges not covered by this provision. A creditor may pass on increases in taxes since such charges are imposed by a governmental body and are beyond the control of the creditor. In addition, a creditor may pass on increases in premiums for property insurance that are excluded from the finance charge under § 226.4(d)(2), since such insurance provides a benefit to the consumer independent of the use of the line and is often maintained notwithstanding the line. A creditor also may pass on increases in premiums for credit insurance that are excluded from the finance charge under § 226.4(d)(1), since the insurance is voluntary and provides a benefit to the consumer.

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

1. Changes provided for in agreement. A creditor may provide in the initial agreement 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 home equity plans for employees, the agreement could provide that a specified higher rate or margin will apply if the borrower's employment with the creditor ends. A contract could contain a stepped-rate or stepped-fee schedule providing for specified changes in the rate or the fees on certain dates or after a specified period of time. A creditor also may provide in the initial agreement that it will be entitled to a share of the appreciation in the value of the property as long as the specific appreciation share and the specific circumstances which require the payment of it are set forth. A contract may permit a consumer to switch among minimum payment options during the plan.
2. Prohibited provisions. A creditor may not include a general provision in its

agreement permitting changes to any or all of the terms of the plan. For example, creditors may not include "boilerplate" language in the agreement stating that they reserve the right to change the fees imposed under the plan. In addition, a creditor may not include any "triggering events" or responses that the regulation expressly addresses in a manner different from that provided in the regulation. For example, an agreement may not provide that the margin in a variable-rate plan will increase if there is a material change in the consumer's financial circumstances, because the regulation specifies that temporarily freezing the line or lowering the credit limit is the permissible response to a material change in the consumer's financial circumstances. Similarly a contract cannot contain a provision allowing the creditor to freeze a line due to an insignificant decline in property value since the regulation allows that response only for a significant decline.

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

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

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

1. Changes by written agreement. A creditor may change the terms of a plan if the consumer expressly agrees in writing to the change at the time it is made. For example, a consumer and a creditor could agree in writing to change the repayment terms from interest-only payments to payments that reduce the principal balance. The provisions of any such agreement are governed by the limitations in § 226.5b(f). For example, a mutual agreement could not provide for future annual percentage rate changes based on the movement of an index controlled by the creditor or for termination and acceleration under circumstances other than those specified in the regulation. By contrast, a consumer could agree to a new credit limit for the plan, although the agreement could not permit the creditor to later change the credit limit except by a subsequent written agreement or in the circumstances described in § 226.5b(f)(3)(vi).

2. Written agreement. The change must be agreed to in writing by the consumer. Creditors are not permitted to assume consent because the consumer uses an account, even if use of an account would otherwise constitute acceptance of a proposed change under state law.

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

1. Beneficial changes. After a plan is opened, a creditor may make changes that unequivocally benefit the consumer. Under this provision, a creditor may offer more options to consumers, as long as existing options remain. For example, a creditor may offer the consumer the option of making lower monthly payments or could increase the credit limit. Similarly, a creditor wishing to

extend the length of the plan on the same terms may do so. Creditors are permitted to temporarily reduce the rate or fees charged during the plan (though a change in terms notice may be required under § 226.9(c) when the rate or fees are returned to their original level). Creditors also may offer an additional means of access to the line, even if fees are associated with using the device, provided the consumer retains the ability to use prior access devices on the original terms.

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

1. Insignificant changes. A creditor is permitted to make insignificant changes after a plan is opened. This rule accommodates operational and similar problems, such as changing the address of the creditor for purposes of sending payments. It does not permit a creditor to change a term such as a fee charged for late payments.
2. Examples of insignificant changes. Creditors may make minor changes to features such as the billing cycle date, the payment due date (as long as the consumer does not have a diminished grace period if one is provided), and the day of the month on which index values are measured to determine changes to the rate for variable-rate plans. A creditor also may change its rounding practice in accordance with the tolerance rules set forth in § 226.14 (for example, stating an exact APR of 14.3333 percent as 14.3 percent, even if it had previously been stated as 14.33 percent). A creditor may change the balance computation method it uses only if the change produces an insignificant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the average daily balance method (including new transactions) to the daily balance method (including new transactions).

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

1. Suspension of credit or reduction of credit limit. A creditor may prohibit additional extensions of credit or reduce the credit limit in the circumstances specified in the regulation. A creditor may not take these actions under other circumstances, unless the creditor would be permitted to terminate the line and accelerate the balance as described in § 226.5b(f)(2). The creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment.
2. Temporary nature of suspension or reduction. Creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only while one of the designated circumstances exists. When the circumstance justifying the creditor's action ceases to exist, credit privileges must be reinstated, assuming that no other circumstance permitting such action exists at that time.
3. Imposition of fees. If not prohibited by state law, a creditor may collect only bona fide and reasonable appraisal and credit report fees if such fees are actually incurred in investigating whether the condition permitting the freeze continues to exist. A creditor may not, in any circumstances, impose a fee to reinstate a credit line once the condition has been determined not to exist.
4. Reinstatement of credit privileges. Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's

action ceases to exist. One way a creditor can meet this responsibility is to monitor the line on an ongoing basis to determine when the condition ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze continues to exist. The frequency with which the creditor must investigate to determine whether a condition continues to exist depends upon the specific condition permitting the freeze. As an alternative to such monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges by providing a notice in accordance with § 226.9(c)(3). A creditor may require a reinstatement request to be in writing if it notifies the consumer of this requirement on the notice provided under § 226.9(c)(3). Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.

5. Suspension of credit privileges following request by consumer. A creditor may honor a specific request by a consumer to suspend credit privileges. If the consumer later requests that the creditor reinstate credit privileges, the creditor must do so provided no other circumstance justifying a suspension exists at that time. If two or more consumers are obligated under a plan and each has the ability to take advances, the agreement may permit any of the consumers to direct the creditor not to make further advances. A creditor may require that all persons obligated under a plan request reinstatement.

6. Significant decline defined. What constitutes a significant decline for purposes of § 226.5b(f)(3)(vi)(A) will vary according to individual circumstances. In any event, if the value of the dwelling declines such that the initial difference between the credit limit and the available equity (based on the property's appraised value for purposes of the plan) is reduced by fifty percent, this constitutes a significant decline in the value of the dwelling for purposes of § 226.5b(f)(3)(vi)(A). For example, assume that a house with a first mortgage of $50,000 is appraised at $100,000 and the credit limit is $30,000. The difference between the credit limit and the available equity is $20,000, half of which is $10,000. The creditor could prohibit further advances or reduce the credit limit if the value of the property declines from $100,000 to $90,000. This provision does not require a creditor to obtain an appraisal before suspending credit privileges although a significant decline must occur before suspension can occur.

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

8. Default of a material obligation.

Creditors may specify events that would qualify as a default of a material obligation under § 226.5b(f)(3)(vi)(C). For example, a creditor may provide that default of a material obligation will exist if the consumer moves out of the dwelling or permits an intervening lien to be filed that would take priority over future advances made by the creditor.
9. Government limits on the annual percentage rate. Under § 226.5b(f)(3)(vi)(D), a creditor may prohibit further advances or reduce the credit limit if, for example, a state usury law is enacted which prohibits a creditor from imposing the agreed-upon annual percentage rate.

5b(g) Refund of Fees

1. Refund of fees required. If any disclosed term, including any term provided upon request pursuant to § 226.5b(d), changes between the time the early disclosures are provided to the consumer and the time the plan is opened, and the consumer as a result decides to not enter into the plan, a creditor must refund all fees paid by the consumer in connection with the application. All fees, including credit report fees and appraisal fees, must be refunded whether such fees are paid to the creditor or directly to third parties. A consumer is entitled to a refund of fees under these circumstances whether or not terms are guaranteed by the creditor under § 226.5b(d)(2)(i).
2. Variable-rate plans. The right to a refund of fees does not apply to changes in the annual percentage rate resulting from fluctuations in the index value in a variable-rate plan. Also, if the maximum annual percentage rate is expressed as an amount over the initial rate, the right to refund of fees would not apply to changes in the cap resulting from fluctuations in the index value.
3. Changes in terms. If a term, such as the maximum rate, is stated as a range in the early disclosures, and the term ultimately applicable to the plan falls within that range, a change does not occur for purposes of this section. If, however, no range is used and the term is changed (for example, a rate cap of 6 rather than 5 percentage points over the initial rate), the change would permit the consumer to obtain a refund of fees. If a fee imposed by the creditor is stated in the early disclosures as an estimate and the fee changes, the consumer could elect to not enter into the agreement and would be entitled to a refund of fees. On the other hand, if fees imposed by third parties are disclosed as estimates and those fees change, the consumer is not entitled to a refund of fees paid in connection with the application. Creditors must, however, use the best information reasonably available in providing disclosures about such fees.
4. Timing of refunds and relation to other provisions. The refund of fees must be made as soon as reasonably possible after the creditor is notified that the consumer is not entering into the plan because of the changed term, or that the consumer wants a refund of fees. The fact that an application fee may be refunded to some applicants under this provision does not render such fees finance charges under § 226.4(c)(1) of the regulation.

5b(h) Imposition of Nonrefundable Fees

1. Collection of fees after consumer receives disclosures. A fee may be collected after the consumer receives the disclosures and brochure and before the expiration of three days, although the fee

must be refunded if, within three days of receiving the required information, the consumer decides to not enter into the agreement. In such a case, the consumer must be notified that the fee is refundable for three days. The notice must be clear and conspicuous and in writing, and may be included with the disclosures required under § 226.5b(d) or as an attachment to them. If disclosures and brochure are mailed to the consumer, footnote 10d of the regulation provides that a nonrefundable fee may not be imposed until six business days after the mailing.
2. Collection of fees before consumer receives disclosures. An application fee may be collected before the consumer receives the disclosures and brochure (for example, when an application contained in a magazine is mailed in with an application fee) provided that it remains refundable until three business days after the consumer receives the § 226.5b disclosures. No other fees except a refundable membership fee may be collected until after the consumer receives the disclosures required under § 226.5b.
3. Relation to other provisions. A fee collected before disclosures are provided may become nonrefundable except that, under § 226.5b(g), it must be refunded if the consumer elects to not enter into the plan because of a change in terms. (Of course, all fees must be refunded if the consumer later rescinds under § 226.15.)

Section 226.6 Initial Disclosure Statement

7. Comment 6(a)(2)-2 is amended by adding a sentence after the first sentence of the flush text following the third bulleted 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.)
8. Comments 6(e)-1 through 6(e)-4 and a heading are 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.
2. Form of disclosures. The home equity disclosures provided under this section must be in a form the consumer can keep, and are governed by § 226.5(a)(1). The segregation standard set forth in § 226.5b(a) does not apply to home equity disclosures provided under § 226.6.
3. Disclosure of payment and variable-rate examples. The payment example disclosure in § 226.5b(d)(5)(iii) and the variable-rate information in § 226.5b(d)(12) (viii), (x), (xi), and (xii) need not be provided with the disclosures under § 226.6 if:
- The disclosures under § 226.5b(d) were provided in a form the consumer could keep; and
- The disclosures of the payment example under § 226.5b(d)(5)(iii), the maximum payment example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(xi) included a

representative payment example for the category of payment options the consumer has chosen.

For example, if a creditor offers three payment options (one for each of the categories described in the commentary to § 226.5b(d)(5)), describes all three options in its early disclosures, and provides all of the disclosures in a retainable form, that creditor need not provide the § 226.5b(d)(5)(iii) or (d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures (which would be the case with a separate disclosure form rather than a combined form, as discussed under § 226.5b(a)), the disclosures under § 226.5b(d)(5)(iii) and (d)(12) (viii), (x), (xi) and (xii) must be given to any consumer who chooses one of the other two options. If the § 226.5b(d)(5)(iii) and (d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

4. Disclosures for the repayment period. The creditor must provide disclosures about both the draw and repayment phases when giving the disclosures under § 226.6. Specifically, the creditor must make the disclosures in § 226.6(e), state the corresponding annual percentage rate (as required in § 226.6(a)(2)) and provide the variable-rate information required in footnote 12 for the repayment phase. To the extent the corresponding annual percentage rate, the information in footnote 12 and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information. as long as the disclosure clearly states that the information applies to both phases.

Section 226.9 Subsequent Disclosure Requirements

9. Comment 9(c)-1 is 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.

10. Comment 9(c)(1)-6 is addd 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 those of the original plan, the requirements of § 226.9(c) apply to such a change. When the terms are changed pursuant to a written agreement as described in § 225.5b(f)(3)(iii), the advance notice requirement does not apply.

11. Comments 9(c)(3)-1 and 9(c)(3)-2 and a heading are added to read as follows:

9(c)(3) Notice for Home Equity Plans

1. Written request for reinstatement. If a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under § 226.9(c)(3) must state that fact.

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

balance.

12. Comments 9(e)-1 through 9(e)(3)-2 and headings are 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 must send a renewal notice to employees disclosing the lower rate actually charged to employees (although the card issuer also may show the rate charged to the general public).
4. Variable rate. If the card issuer cannot determine the rate that will be in effect if the cardholder chooses to renew a variable-rate account, the card issuer may disclose the rate in effect at the time of mailing or delivery of the renewal notice. Alternatively, the card issuer may use the rate as of a specified date (and then update the rate from time to time, for example, each calendar month) or use an estimated rate under § 226.5(c).
5. Renewals more frequent than annual. If a renewal fee is billed more often than annually, the renewal notice should be provided each time the fee is billed. In this instance, the fee need not be disclosed as an annualized amount. Alternatively, the card issuer may provide the notice no less than once every twelve months if the notice explains the amount and frequency of the fee that will be billed during the time period covered by the disclosure, and also discloses the fee as an annualized amount. The notice under this alternative also must state the consequences of a cardholder's decision to terminate the account after the renewal notice period has expired. For example, if a $2 fee is billed monthly but the notice is given annually, the notice must inform the cardholder that the monthly charge is $2, the annualized fee is $24, and $2 will be billed to the account each month for the coming year unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid monthly charges if the cardholder terminates the account during the coming year but after the first month, the notice must disclose that fact.
6. Terminating credit availability. Card issuers have some flexibility in determining the procedures for how and when an account may be terminated. However, the card issuer must clearly disclose the time by which the cardholder must act to terminate the account to avoid paying a renewal fee. State and other applicable law govern whether the card issuer may impose requirements such as specifying that the cardholder's response be in writing or

that the outstanding balance be repaid in full upon termination.

7. Timing of termination by cardholder. When a card issuer provides notice under § 226.9(e)(1), a cardholder must be given at least 30 days or one billing cycle, whichever is less, from the date the notice is mailed or delivered to make a decision whether to terminate an account. When notice is given under § 226.9(e)(2), a cardholder has 30 days from mailing or delivery to decide to terminate an account.

8. Timing of notices. A renewal notice is deemed to be provided when mailed or delivered. Similarly, notice of termination is deemed to be given when mailed or delivered.

9. Prompt reversal of renewal fee upon termination. In a situation where a cardholder has provided timely notice of termination and a renewal fee has been billed to a cardholder's account, the card issuer must reverse or otherwise withdraw the fee promptly. Once a cardholder has terminated an account, no additional action by the cardholder may be required.

9(e)(3) Notification on Periodic Statements

1. Combined disclosures. If a single disclosure is used to comply with both §§ 226.9(e) and 226.7, the periodic statement must comply with the rules in §§ 226.5a and 226.7. For example, the words "grace period" must be used and the name of the balance calculation method must be identified (if listed in § 226.5a(g)) to comply with the requirements of § 226.5a, even though the use of those terms would not otherwise be required for periodic statements under § 226.7. A card issuer may include some of the renewal disclosures on a periodic statement and others on a separate document so long as there is some reference indicating that they relate to one another. All renewal disclosures must be provided to a cardholder at the same time.

2. Preprinted notices on periodic statements. A card issuer may preprint the required information on its periodic statements. A card issuer that does so, however, using the advance notice option under § 226.9(e)(1), must make clear on the periodic statement when the preprinted renewal disclosures are applicable. For example, the card issuer could include a special notice (not preprinted) at the appropriate time that the renewal fee will be billed in the following billing cycle, or could show the renewal date as a regular (preprinted) entry on all periodic statements.

13. Comments 9(f)-1 through 9(f)-4 and 9(f)(3)-1 and headings are 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 either must explain the decrease or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. (See the commentary to Appendix G-13.)

4. Discontinuation of insurance. In addition to stating that the cardholder may cancel the insurance, the card issuer may explain the effect the cancellation would have on the consumer's credit card plan.

5. Mailing by third party. Although the card issuer is responsible for the disclosures, the insurance provider or another third party may furnish the disclosures on the card issuer's behalf.

9(f)(3) Substantial Decrease in Coverage

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

Section 226.12 Special Credit Card Provisions

14. Comment 12(a)(2)-9 is added to read as follows:

12(a) Issuance of Credit Cards

Paragraph 12(a)(2)

9. Multiple entities. Where multiple entities share responsibilities with respect to a credit card issued by one of them, the entity that issued the card may replace it on an unsolicited basis, if that entity terminates the original card by voiding it in some way, as described in comment 12(a)(2)-7. The other entity or entities may not issue a card on an unsolicited basis in these circumstances.

Section 226.14 Determination of Annual Percentage Rate

15. The heading to comments under § 226.14(b) is revised to read as follows:

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

16. Comment 14(b)-1 is 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, 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

17. Comments to 15(a)(3) are amended by revising the fourth sentence and by adding two sentences at the end of

comment 1.5(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. * * * Failure to give the other required initial disclosures (such as the billing rights statement) or the information required under section 226.5b. does not prevent the running of the rescission period, although that failure may result in civil liability or administrative sanctions. The payment terms set forth in footnote 36 apply to any repayment phase set forth in the agreement. Thus, the payment terms described in § 226.6(e)(2) for any repayment phase as well as for the draw period are "material disclosures."
3. Material disclosures--variable-rate program. * * * The disclosures listed in footnote 12 to section 226.6(a)(2) for any repayment phase also are material disclosures for variable-rate programs.

Section 226.16 Advertising

18. Comments to 16(b) are 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 percentaqe rates. * * * The options listed in comment I6(b)-5 may be used in disclosing the current indexed rate.

19. Comment 16(b)-7 is 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 positive numbers.
20. Comment 16(b)-8 is added to read as follows:
8. Deferred billing and deferred payment programs. Statements such as "Charge it--you won't be billed until May" or "You may skip your January payment" are not in themselves triggering terms, since the timing for initial billing or for monthly payments are not terms required to be disclosed under § 226.6. However, a statement such as "No finance charge until May" or any other statement regarding when finance charges begin to accrue is a triggering term, whether appearing alone or in conjunction with a description of a deferred billing or deferred payment program such as the examples above.
21. Comments 16(d)-1 through 16(d)-6 and a heading are 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," "no points," or "we waive closing costs" in an advertisement, additional information must be provided. (See comment 16(d)-4 regarding the use of a phrase such as "no closing costs.") Inclusion of a statement such as "low fees," however, would not trigger the need to state additional information. References to payment terms include references to the draw period or any repayment period, to the length of the plan, to how the minimum payments are determined and to the timing of such payments.

2. Fees to open the plan. Section 226.16(d)(1)(i) requires a disclosure of any fees imposed by the creditor or a third party to open the plan. In providing the fee information required under this paragraph, the corresponding rules for disclosure of this information apply. For example, fees to open the plan may be stated as a range. Similarly, if property insurance is required to open the plan, a creditor either may estimate the cost of the insurance or provide a statement that such insurance is required. (See the commentary to § 226.5b(d)(7) and (8).)

3. Statements of tax deductibility. An advertisement referring to deductibility for tax purposes is not misleading if it includes a statement such as "consult a tax advisor regarding the deductibility of interest."

4. Misleading terms prohibited. Under § 226.16(d)(5), advertisements may not refer to home equity plans as "free money" or use other misleading terms. For example, an advertisement could not state "no closing costs" or "we waive closing costs" if consumers may be required to pay any closing costs, such as recordation fees.

5. Relation to other sections. Advertisements for home equity plans must comply with all provisions in § 226.16, not solely the rules in § 226.16(d). If an advertisement contains information (such as the payment terms) that triggers the duty under § 226.16(d) to state the annual percentage rate, the additional disclosures in § 226.16(b) must be provided in the advertisement. While § 226.16(d) does not require a statement of fees to use or maintain the plan (such as membership fees and transaction charges), such fees must be disclosed under § 226.16(b) (1) and (3).

6. Inapplicability of closed-end rules. Advertisements for home equity plans are governed solely by the requirements in § 226.16, and not by the closed-end advertising rules in § 226.24. Thus, if a creditor states payment information about the repayment phase, this will trigger the duty to provide additional information under § 226.16. but not under § 226.24.

Subpart C--Closed-End Credit

Section 226.17--General Disclosure Requirements

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

17(b) Time of Disclosures

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

transaction. * * *

17(c) Basis of Disclosures and Use of Estimates

23. Comments to 17(c)(1) are amended by adding flush text to follow the third bulleted paragraph of comment 17(c)(1)-4; by adding a fourth bulleted paragraph before the last paragraph of comment 17(c)(1)-11; and by adding a new comment 17(c)(l)-17, to read as follows:

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 the 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 upon demand, but also may provide that repayment is required when the refund is made. The agreements also typically provide that if the amount of the refund is less than the payment due, the consumer must pay the difference. Repayment often is made by a preauthorized offset to a consumer's account held with the creditor when the refund has been deposited by electronic transfer. Creditors may charge fees for RALs in addition to fees for filing the consumer's tax return electronically. In RAL transactions subject to the regulation the following special rules apply:
- If, under the terms of the legal obligation, repayment of the loan is required when the refund is received by the consumer (such as by deposit into the consumer's account), the disclosures should be based on the creditor's estimate of the time the refund will be delivered even if the loan also contains a demand clause. The practice of a creditor to demand repayment upon delivery of refunds does not determine whether the legal obligation requires that repayment be made at that time; this determination must be made according to applicable state or other law. (See comment 17(c)(5)-1 for the rules regarding disclosures if the loan is payable solely on demand or is payable either on demand or on an alternate maturity date.)
- If the consumer is required to repay more than the amount borrowed, the difference is a finance charge unless

excluded under § 226.4. In addition, to the extent that any fees charged in connection with the loan (such as for filing the tax return electronically) exceed those fees for a comparable cash transaction (that is, filing the tax return electronically without a loan), the difference must be included in the finance charge.

Section 226.19 Certain Residential Mortgage Transactions

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

19(a)(1) Time of Disclosure

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

25. Comments to 19(b) are amended by adding parenthetical information after the second sentence in comment 19(b)-2; by redesignating comments 19(b)-3 and 19(b)-4 to be comments 19(b)-4 and 19(b)-5, respectively; by adding new comment 19(b)-3; in newly redesignated comment 19(b)-5, in the second bulleted paragraph, the last sentence should appear as flush text below that paragraph and by adding a third bulleted paragraph preceding the flush text to newly redesignated comment 19(b)-5 to read as follows:

19(b) Certain Variable-Rate Transactions

2. Timing. * * * (See comment 19(b)-3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) * * *

3. Intermediary agent or broker. In certain transactions involving an "intermediary agent or broker," a creditor may delay providing disclosures. A creditor may not delay providing disclosures in transactions involving either a legal agent (as determined by applicable law) or any other third party that is not an "intermediary agent or broker." In determining whether or not a transaction involves an "intermediary agent or broker" the following factors should be considered:

- The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the creditor. The greater the percentage of total loan applications submitted by the broker in any given period of time, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor during the next period.
- The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the broker. (This factor is applicable only if the creditor has such information.) The greater the percentage of total loan applications received by the broker that is submitted to a creditor in any given period of time, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor during the next period.
- The amount of work (such as document preparation) the creditor expects to be done by the broker on an application based on the creditor's prior dealings with the broker and on the creditor's requirements for accepting applications. The more preparation that the creditor expects the broker to do on an application, 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. The broker is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, it might request a credit report and an appraisal.

5. Examples 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 the loan balance to reflect changes in an index measuring prices or inflation. The disclosures under § 226.19(b)(1) are not applicable to such loans, nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest rate, or interest rate discounts: Section 226.19(b)(2) (i), (iii), (iv), (v), (vi), (vii), (viii), (ix), and (x). (See comments 20(c)-2 and 30-1 regarding the inapplicability of variable-rate adjustment notices and interest rate limitations to price level adjusted or similar mortgages.)

Section 226.20 Subsequent Disclosure Requirements

26. Comment 20(c)-2 is revised to read as follows:

20(c) Variable-Rate Adjustments

2. Exceptions. Section 226.20(c) does not apply to "shared-equity," "shared-appreciation," or "price level adjusted" or similar mortgages.

Subpart D--Miscellaneous

Section 226.25 Record Retention

27. Comment 25(a)-4 is 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 are 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 solicitations. (For purposes of this section, a single credit

or charge card application or solicitation that may be used to open either an account for consumer purposes or an account for business purposes is deemed to be a "consumer credit or charge card application or solicitation.") For example, a state law requiring disclosure of credit terms in direct mail solicitations for consumer credit card accounts is preempted. A state law requiring disclosures in telephone applications for consumer credit card accounts also is preempted, even if it applies to applications initiated by the consumer rather than the issuer, because the state law relates to the disclosure of credit information in applications or solicitations within the general field of preemption, that is, consumer credit and charge cards.

2. Limitations on field of preemption. Preemption under the Fair Credit and Charge Card Disclosure Act does not extend to state laws applying to types of credit other than open-end consumer credit and charge card accounts. Thus, for example, a state law is not preempted as it applies to disclosures in credit and charge card applications and solicitations solely for business-purpose accounts. On the other hand, state credit disclosure laws will not apply to a single application or solicitation to open either an account for consumer purposes or an account for business purposes. Such "dual purpose" applications and solicitations are treated as "consumer credit or charge card applications or solicitations" under this section and state credit disclosure laws applicable to them are preempted. Preemption under this statute does not extend to state laws applicable to home equity plans; preemption determinations in this area are based on the Home Equity Loan Consumer Protection Act, as implemented in § 226.5b of the regulation.

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

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

Section 226.30 Limitations on Rates

29. Comment 30-1 is amended by revising the text of the second bulleted paragraph and the flush text preceding the third bulleted paragraph is

republished; by revising the first sentence in the fourth bulleted paragraph; and by adding a sixth bulleted paragraph before the flush text which appears at the end of comment 30-1 to read as follows:
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 (the effective date of the home equity rules) that are not considered variable-rate obligations for purposes of disclosure under the regulation but where the creditor reserves the contractual right to increase the interest rate--periodic rate and corresponding annual percentage rate--during the term of the plan.
In contrast, credit obligations in which there is no contractual right to increase the interest rate during the term of the obligation are not subject to this section. Examples include:

- Dwelling-secured fixed-rate closed-end balloon-payment mortgage loans and dwelling-secured fixed-rate open-end plans with a stated term that the creditor may renew at maturity.

- "Price level adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation.
30. Comment 30-11 is amended by revising the fourth sentence; by removing the fifth sentence; and by adding a new 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, or enters into a closed-end credit transaction, a new maximum interest rate may be set at that time. If the open-end plan provides for a repayment phase, the maximum interest rate cannot be increased when the repayment phase begins unless the agreement provided for such an increase.

Appendix G--Open-End Model Forms and Clauses

31. Coments app. G-5 through app. G-7 are added to read as follows:
5. Models G-10(A) through G-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 in compliance with the regulation, card issuers are permitted to use headings and disclosures other than those in the forms (with an exception relating to the use of "grace period") if they are clear and concise and are substantially similar to the headings and disclosures contained in model forms. For further discussion of requirements relating to form, see the commentary to § 226.5a(a)(2).

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

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

Board of Governors of the Federal Reserve System, March 29, l990.

William W. Wiles,

Secretary of the Board.