FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0288]

Truth in Lending; Revision of Regulation Z

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board seeks public comment on a completely revised version of Regulation Z. The proposed revision of the regulation is necessitated by the adoption of the Truth in Lending Simplification and Reform Act, which is Title VI of the Depository Institutions Deregulation and Monetary Control Act (Public Law 96-221). The act was signed into law on March 31, 1980, and will become fully effective on April 1, 1982, with an implementing regulation required to be in place by April 1, 1981.

DATE: Comments must be received on or before July 31, 1980.

ADDRESS: Comments may be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue NW., Washington, D.C., between 8:45 a.m. and 5:15 p.m. Comments may also be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m. The comments should refer to docket number number R-0288.

FOR FURTHER INFORMATION CONTACT: In general, Robert C. Plows, Assistant Director (202/452-3667); for Subpart B, Maureen P. English, Section Chief (202/452-3867); for Subparts A, C, and E, Margaret A. Stewart (202/452-2412) or Ellen Maland (202/452-3867), Senior Attorneys; and for Subpart D, Lynne B. Barr, Senior Attorney (202/452-2412), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Introduction

On March 31, 1980, the President signed into law the Truth in Lending Simplification and Reform Act (Title VI of Public Law 96-221, the Depository Institutions Deregulation and Monetary Control Act). The simplication act significantly amends the Truth in Lending and Fair Credit Billing Acts (title 15, sections 1601 through 1666 of the United States Code) and will become fully effective on April 1, 1982. The act mandates that an implementing regulation be in place by April 1, 1981, and provides that a creditor may comply with the new law as soon as the regulation is adopted in final form.

The accompanying proposal represents the first step in implementing that mandate. It is also the product of the first stage of the comprehensive review of Regulation Z undertaken pursuant to the Board's Regulatory Improvement Project. The purpose of that review is to determine how the regulation and related interpretations can be modified within the revised statutory framework to implement more effectively the comparative and descriptive disclosure functions intended by the Congress, while also providing creditors and lessors with clearer, more understandable, and less burdensome rules.

Although the simplification act does not change any of the provisions of the Consumer Leasing Act (Title 15, section 1667 of the United States Code), which is also implemented by Regulation Z, the accompanying proposal includes revised rules (Subpart D) on consumer leasing to parallel as much as possible the proposed changes in the other portions of the draft regulation. If the Congress makes any amendments to the Consumer Leasing Act, the proposed regulation will be altered to reflect those amendments.

Although the proposal would simplify current requirements, the law remains relatively complex for two reasons. First, consumer credit and personal property leases are offered in a wide diversity of forms. For example, credit may be available on a revolving or closed-end basis; payable on demand or in equal or graduated installments; with a precomputed finance charge, on a simple interest basis, or both; secured or unsecured; and with or without credit and property insurance, which may be voluntary or required. It may be requested in person, by mail, or by telephone and may be refinanced, assumed, or deferred. Nearly the same variety occurs with leases. A regulatory scheme that tries to accommodate such diverse arrangements must itself be diverse and, hence, to an extent, complicated.

Second, the revised statute continues to provide for significant civil penalties for violations (between $100 and $1,000 for each violation, up to $500,000 in a class action, plus attorney's fees and court costs). Since there have been thousands of court suits involving alleged violations over the past 11 years, creditors and lessors have demanded specificity in the disclosure rules. That has been the principal impetus for the 65 Board interpretations and approximately 1500 published staff letters that have been issued since 1969. The new statute reduces the number of disclosures that are subject to statutory penalties; on the other hand, it makes understatements of the annual percentage rate and finance charge subject to administratively ordered restitution. Thus, the need for specificity spawned by the concern over damages remains.

Major Changes

The proposal makes at least eleven major changes in the regulation.

- It restructures the regulation's format to group together related provisions in separate subparts. Although that results in some duplication and therefore lengthening of the regulation, it means that the substantive rules for closed-end (for example, installment and mortgage) credit, open-end (for example, revolving) credit, and personal property leases are presented separately, eliminating the need to search through the regulation for the applicable provisions.
- It incorporates into the regulation the substance of many Board and staff interpretations and clarifies several troublesome questions raised by court decisions.
- It includes model disclosure forms and language to enhance understanding and compliance and to provide a safe harbor from civil liability.
- It exempts agricultural credit from disclosure requirements.
- It encourages early disclosure through the use of streamlined closed-end credit disclosures reflecting representative transactions. In the Board's view, that is the most innovative change in the regulation and is designed to provide consumers with a realistic opportunity for credit shopping. If implemented, it has the potential to become the single most effective mechanism for achieving the statutory goal of fostering the informed use of credit.
- It eliminates 12 of the 24 closed-end credit disclosures currently required for certain transactions, while permitting consumers to request an explanation of how the credit proceeds were disbursed if they desire.
- It requires for the first time that closed-end credit disclosures be placed together and segregated from other contract provisions and any other federal or state disclosures.
- Although, like the new statute, it does not materially change the open-end credit disclosures, it clarifies a number of points about those disclosures and eases several requirements regarding billing statements and error notices.
- It eliminates many of the current format requirements for open-end credit

disclosures, thereby giving creditors more flexibility in designing their forms to convey necessary information more effectively.

• It conforms the open-end credit disclosures to the requirements of Regulation E [Electronic Fund Transfers] wherever necessary and possible.

• It exempts from the right of rescission advances made under an open-end credit account that is secured by the consumer's home.

Regulatory Options

The proposal incorporates several requirements that are not expressly mandated by statute. The Board specifically invites comments on the merits of including those requirements and on how they might be modified to further the purposes of the amended Truth in Lending Act. Examples of such provisions are:

• The proposal defines certain refinancings and assumptions of existing closed-end credit obligations as new transactions requiring new disclosures. It also requires advance notice of changes affecting open-end credit plans. In both instances, it generally follows the current regulation.

• The proposal requires an explanation of any variable rate feature in a consumer credit obligation.

• For an obligation payable on demand, the proposal requires disclosure of the demand feature and further requires that other relevant disclosures be based on a one-year assumed maturity, unless the creditor and consumer agree upon a repayment schedule.

• It mandates that a deposit or investment required by a creditor as a condition for granting credit be taken into account in calculating the annual percentage rate for the transaction, unless the deposit or investment will earn interest or dividends during the period that credit is outstanding.

• It defines consummation of a transaction, in part, as the payment by a consumer of any nonrefundable fee, other than a good-faith application fee.

• It defines a creditor's business days to include Saturdays.

• It defines a billing cycle to be no longer than a quarter of a year.

• It defines a consumer to include a guarantor or similar party.

In addition to those and other requirements not expressly mandated by the statute, the proposal also offers several options not expressly permitted by the act. The Board specifically invites comment on the appropriateness of these options.

• The most significant option for creditors contained in the proposal is the so-called alternate shopping disclosures—advertisements—like disclosures that generally may be made in lieu of the regular, transactional disclosures. The Board is particularly eager to receive comment on that idea.

• It permits a number of payment irregularities to be disregarded in making disclosures.

• It requires the disclosure of only the initial insurance premium as the relevant cost disclosure to exclude credit life, accident, health, and property insurance from the finance charge.

• It permits fewer disclosures to be made for interim student loans.

There are, of course, other provisions in the proposal that are not derived directly from the statute, and the Board invites comment on those points as well. The Board seeks comment on the organizational structure of the proposal and whether the division into subparts is helpful. It also would appreciate comments on whether additional model forms and clauses should be provided and, if so, suggestions about what would be useful. Eventually the Board intends to provide an official commentary to accompany the revised regulation. In considering how to present the commentary, the Board would like to know whether official comments should follow each regulatory section in the style of the Uniform Commercial Code or whether the comments should be presented together in a separate document.

The various supplements to Regulation Z are not included in this proposal since the Board has not made any revisions to them at this time. If revisions do become necessary, the Board expects to publish them for comment later.

Discussion of Proposal

Subpart A—General

Section 226.1—Authority, Purpose, Scope, Organization, Circumvention or Evasion

Paragraphs (a) and (b), on authority and purpose of the regulation restate what is contained in present § 226.1(a). The proposed scope paragraph has been drafted to explain clearly the coverage of the regulation.

The draft regulation has been significantly reorganized by dividing it into five subparts—grouping together provisions relating to general matters (coverage, definitions, exemptions, finance charge), open-end credit, closed-end credit, consumer leasing, and miscellaneous rules (record retention, Spanish language disclosures, effect on state laws, state exemptions, staff interpretations). To explain that new structure, paragraph (d) on organization has been added.

The final paragraph, prohibiting circumvention or evasion of the proposed regulation, is also new. It is designed to prevent a creditor from avoiding disclosure responsibilities by taking an otherwise permissible action for the purpose of circumventing or evading the regulation's requirements. For example, a required deposit balance is defined in proposed § 226.2(z) as a balance or investment that does not earn interest or dividends during the term of the obligation. If a creditor paid a nominal dividend or interest payment on a balance or investment in order to avoid having to take account of what would be, absent the nominal interest or dividend, a required deposit balance, that would constitute circumvention or evasion of the regulation and would violate this proposed paragraph.

The provisions on administrative enforcement and civil liability currently in the regulation (present § 226.1(b) and (c) have been deleted as unnecessary, since the entire statute, including the provisions addressing these matters, will be reprinted in an appendix to the regulation. The provision on the issuance of staff interpretations (current § 226.1(d)) appears in proposed § 226.21 in Subpart E.

Section 226.2—Definitions and Rules of Construction

Section 226.2 incorporates virtually all of the defined terms used in Regulation Z. For ease of reference, they have been assembled into one section, even though several definitions, such as those pertaining to leases, may be relevant to only one or two substantive sections. Several terms are defined only in the substantive sections to which they relate, primarily because they relate to only one particular provision or because they have different definitions depending on the section to which they apply. A number of the terms come directly from statutory definitions, while others have been added to clarify regulatory provisions or to reduce the need for repetition.

Section 226.2(a) describes advertisements that may be subject to §§ 226.10, 226.14 or 226.16. The definition, which has no statutory counterpart, is based on § 226.2(d) of the current regulation. The definition includes commercial messages in any visual, oral, or print medium such as television, radio, or newspaper. It is not intended to encompass direct personal contact such as telephone conversations or door-to-door sales, but it does include commercial messages in pamphlets, brochures, and other printed material.

The second sentence of the definition specifically excludes the alternate shopping disclosures described in § 226.11(h). These shopping disclosures may well contain commercial messages, but creditors utilizing this alternative would not thereby trigger the advertising requirements.

The definition of "arrange for a lease" in § 226.2(b) is drawn from the present § 226.2(h).

The definition of an "arranger of credit" under § 226.2(c) is based primarily on amended § 103(f) of the act, which includes in the definition of "creditor" persons in the business of arranging credit under certain circumstances. It replaces the existing definition in § 226.2(h) and is intended to include only professional arrangers acting on behalf of primary lenders who are not themselves "creditors." The credit extended must also be subject to a finance charge or be payable by agreement in more than four installments. The proposal does not attempt to describe what constitutes the degree of involvement in the transaction necessary to bring the person's activities under the regulation. Under the current definition, an arranger is one who either receives compensation for the service or prepares the contract documents with knowledge of their terms. The statute does not use such a standard and the Board believes that its inclusion in the regulation may be unnecessary, in view of the fact that the person's activities must be conducted on a regular professional basis in order to come within the definition. The Board solicits comment, however, on whether further guidance may be needed with regard to this determination.

The definition of "billing cycle" corresponds to present § 226.2(i). The proposal retains the present provision allowing intervals to be considered equal for purposes of computing the annual percentage rate unless the day or date varies by more than four days from the regular one. The definition has been modified to reflect that the creditor may establish regular days, as well as regular dates, on which to send periodic statements, without having to rely on the four-day variance in order to ignore the difference in the number of days within the cycle. For example, a creditor could use the third Thursday of every month as a regular billing day. The Board solicits comment on whether this four-day variance should be retained in its present form.

The definition also has been amended to make clear that the provisions concerning periodic statements apply regardless of whether the creditor "bills" in the traditional sense or merely sends a statement of the account, as many credit unions do.

"Board" is defined here in order to avoid needless repetition elsewhere in the regulation.

"Business day" which was previously defined only in a footnote to present § 226.9(a), has been included in the definitional section. The definition relates not only to the rescission requirements, but also to certain open-end credit provisions such as prompt notification of returns and crediting of refunds under proposed § 226.8(e).

The definition of "cardholder" in § 226.2(g) is essentially unchanged from § 226.2(m) of the present regulation. The first clause has been modified to emphasize that a cardholder includes any person to whom a credit card is issued, even for a business or commercial purpose. This is in direct contrast to the general applicability of Regulation Z, since business or commercial credit is normally exempted from coverage.

The definition of "card issuer" in proposed § 226.2(h) is substantially similar to current § 226.2(1).

"Cash price" is defined in § 226.2(i). While no longer a required disclosure unless the consumer requests itemization of the amount financed, the amount of the cash price is still useful as a starting point in computing the amount financed under § 226.11. The proposed definition is similar to current § 226.2(n), but has been amended to emphasize that charges imposed equally in both cash and credit transactions may be included in this amount. For example, license and registration fees, to the extent they are equally imposed on cash and credit customers, may be incorporated in this amount. As before, however, any charge which constitutes a finance charge under § 226.4 must be excluded from this amount.

Section 226.2(j), "closed-end credit," defines the term which has long been used unofficially to describe the type of credit referred to in the act as "other than open end." Closed-end credit continues to be defined by exclusion; that is to say, if credit does not fit the definition of open-end credit, it must be considered closed-end. Subpart C sets forth the substantive rules applying to these transactions.

The definition of "consumer" in § 226.2(k) is based partly on the statutory definition in § 103(h) and partly on the definition of "customer" in present § 226.2(u). The definition includes a cardholder as well as a natural person, emphasizing the fact that several of the credit card provisions protect cardholders who are organizations as well as individuals. The list of secondary parties, such as sureties, has been amended to indicate that the list is not exclusive. Other persons in a similar position may also constitute consumers, even if they cannot technically be categorized as one of the parties listed.

"Consumer credit" in § 226.2(1) clarifies that there must be both a consumer and a creditor, as those terms are defined in the proposal. The definition also eliminates agricultural purpose credit from the types of credit which are subject to the regulation. This reflects its recent deletion from the coverage of the Truth in Lending Act under amended § 104(1).

The "consumer lease" definition in § 226.2(m) is similar to that in the current regulation, although the language has been simplified by the deletion of material believed unnecessary. The proposal makes clear that the original term of the lease must be more than four months to make the lease subject to the regulation. There has been litigation on the issue of whether a month-to-month lease (with no penalty for cancelling before five months and with an obligation only to pay the rental and any accrued and unpaid charges) constitutes a "consumer lease" or a "credit sale," as defined in the regulation. The Board generally does not think that such leases are subject to either the credit or the leasing provisions of Regulation Z. The Board solicits comment on whether additional clarification is needed, either in the definition or in the commentary to the regulation.

The definition of "consummation" in § 226.2(n) is important because in most closed-end credit transactions and leases it determines the time by which disclosures must be given. Additionally, the occurrence of consummation is one condition for starting the running of the rescission period in certain transactions. The proposed definition would change the approach reflected in present § 226.2(kk). Currently, consummation is defined in terms of the creation of a contractual relationship, a matter normally determined by reference to state law. The new definition, which has no statutory counter-part, would place the time of consummation at the point when the consumer becomes bound to the transaction legally or financially. As in the current regulation this may occur when a contractual relationship is created. Under the proposed definition, however, the prospect of economic loss, such as forfeiture of a nonrefundable fee, would also constitute.

consummation, since the consumer at this point could no longer reject the terms of the transaction without incurring cost. It should be emphasized that the payment of an application fee, even though nonrefundable, would not constitute consummation.

"Credit" as defined in § 226.2(o) is similar to § 103(e) of the act and § 226.2(q) of the current regulation. However, the language relating to the purchase of property or services in the current regulation has been eliminated as unnecessary. The Board believes that the statutory language regarding the incurring of debt applies equally to purchase and loan transactions. Comment is requested on whether the regulation should specifically address whether "credit" includes such situations as home construction contracts with payments made as the work progresses, layaway plans, insurance policy loans, and obligations arising from court judgments.

Section 226.2(p), defining "credit card," implements § 103(k) of the act and is not substantially changed from current § 226.2(r). The credit card must be usable "from time to time"; this standard contemplates repeated use of a single device and therefore the definition excludes checks and similar instruments usable only once to obtain a single credit extension.

The definition of "creditor" in § 226.2(q) determines which persons bear responsibility for most Truth in Lending requirements. The definition is substantially changed from present § 226.2(s), primarily to reflect amended § 103(f) of the act and to simplify the current provision.

The definition describes four types of persons, each of whom independently constitutes a creditor. Section 226.2(q)(1) reflects the basic definition in the act, and it has two parts. Paragraph (q)(1)(i) incorporates the current regulatory standard, under which a person must regularly extend credit payable by agreement in more than four installments or that may be subject to a finance charge. Paragraph (q)(1)(ii) is a department from the present regulation and is mandated by amended § 103(f)(2) of the act. Under the new statutory provision, the debt must also be payable to a person in order for that person to be a creditor. This new definition should eliminate many questions raised under the current definition about whether assignees of contracts are "creditors" for purposes of Truth in Lending. (Note, however, that assignees may still be subject to civil liability for disclosure violations; see new § 131 of the act.)

Paragraphs (q)(2), (q)(3), and (q)(4) of this section define other persons who are considered creditors, even though they may not meet the conditions set forth in the first subparagraph. These provisions incorporate other aspects of the creditor definition in § 103(f).

One who is an arranger of credit within the meaning of § 226.2(c) is a creditor under paragraph (q)(2). This provision encompasses professional arrangers such as loan brokers, but only where the credit extender is not itself a creditor under the regulation. If the latter is a creditor—and thus responsible for Truth in Lending disclosures—Congress apparently considered it unnecessary to require the arranger to duplicate those responsibilities by bringing it within the definition.

Card issuers as defined by § 226.2(h) are creditors by virtue of paragraph (q)(3). This aspect of the definition imposes creditor responsibilities even on those card issuers whose plans involve no finance charge and no agreement to repay in more than four installments.

Under paragraph (q)(4), a person who honors a credit card and does not otherwise come within the definition would be a creditor for certain limited purposes. This provision, like its counterpart in the current regulation, would apply primarily to merchants accepting third-party credit cards. Even though they are not otherwise creditors, they must comply with the regulatory requirements regarding discounts for cash, finance charges imposed at the time of a transaction, and prompt notification to card issuers when merchandise is returned.

The definition of "credit sale" in § 226.2(r) implements § 103(g) of the act and is similar to current § 226.2(t). The distinction between sale and non-sale credit is less significant in this proposal than in the current regulation, where the disclosure requirements for credit sales are more extensive. However, the distinction must still be made, since several disclosures, such as "total sale price" under proposed § 226.11(f)(9), continue to apply only to this type of credit. Note that if the seller of the goods or services involved is not a creditor as to that sale, even though it may have arranged for financing, the transaction does not constitute a credit sale. The definition includes bailments or leases meeting the conditions in paragraphs (r)(1) and (r)(2), unless the consumer may cancel the agreement at any time without incurring a penalty, such as forfeiture of a deposit.

Section 226.2(s), which defines "dwelling," implements § 103(v) of the act, as amended. In contrast to present § 226.2(v), it includes mobile homes and cooperatives, as well as other residential units. A residence need not be classified as realty under state law, as is generally required under the present definition, in order to be considered a dwelling. This expanded definition is particularly important with regard to the right of rescission (since the proposal speaks in terms of "dwelling" rather than "residence") and with regard to the special rules for residential mortgage transactions.

The definition of "lessor" in § 226.2(t) is essentially the same as present § 226.2(oo), except that it eliminates the language about "ordinary course of business." That language is unnecessary since the definition already requires that the actions be performed "regularly."

"Open-end credit," as defined in § 226.2(u), corresponds to § 226.2(x) of the current regulation. The proposed definition attempts to clarify the difference between open-end and closed-end credit and to accommodate problems associated with particular credit plans. The present regulation applies a three-prong test to determine whether a plan is open-end credit. The proposed definition modifies one of those requirements in order to bring more plans within its scope and adds a fourth characteristic in order to clarify the distinction between open-end and closed-end credit.

Under paragraph (u)(1)(i), the creditor must reasonably contemplate repeated transactions. This element restates the current requirement that the plan be usable "from time to time." The change incorporates the amended language in § 103(i) of the act and is intended to emphasize an important characteristic of true open-end credit plans. While purchases of large-ticket items may be part of a valid open-end plan, questions could arise about the validity of structuring some major purchases, such as pianos or automobiles, as open-end credit.

The second part of the traditional test for what is open-end credit is that the consumer have the privilege of paying the balance in full at any time, as well as paying in installments. The proposal changes this test in paragraph (u)(i)(ii). The Board believes that the emphasis should be on the right of the consumer to pay the outstanding balance in full at any time without incurring any penalty or additional charge for such payment. The ability to pay in installments, while permissible in an open-end credit plan, would be not necessary under the proposal. For example, a plan in which purchases are permitted from time to time, with finance charges imposed on the outstanding unpaid balance, would qualify as open-end credit, even though full payment would be required at the end of each month.

Under the present regulation, a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. The proposal retains this requirement in paragraph (u)(1)(iii). A number of credit plans exist in which purchases may be added from time to time, and the balance is payable either in full or in installments, but no finance charge is ever imposed on the account. The Board solicits comment on whether it should include such plans in open-end credit by providing that the possible imposition of a finance charge is not necessary to characterize a plan as open-end credit. (Any finance charge that is imposed on the account would still have to be computed from time to time on the outstanding unpaid balance.) Of course, if no finance charge would ever be imposed under a particular plan, the consumer would have to have the privilege of paying the balance in installments (as well as in full) in order to qualify as credit extended by a creditor for purposes of the regulation.

The proposed draft adds a fourth characteristic by which open-end credit may be distinguished from closed-end credit: the concept that the total amount of credit that may be extended during the existence of the plan is unlimited. To illustrate, if a credit line is $500, a consumer may charge the full $500, repay that amount and then incur another $500 in charges any number of times during the existence of the plan. This characteristic distinguishes open-end and credit from a series of advances made under a loan commitment, which normally is not a replenishing line. An example of such a closed-end transaction is an agreement by a creditor to lend a total of $500 in a series of smaller advances; when the consumer has borrowed the $500, no more money is advanced under that agreement, even if there has been a repayment.

The definition of open-end credit in the current regulation provides that, for limited purposes, the term includes consumer credit extended on an account by use of a credit card, whether or not a finance charge may be imposed. This provision has been omitted from the open-end credit definition in the proposal; card issuers would be considered creditors without regard to the characteristics of the plan. The statutory provision extends a number of the open-end credit provisions to card issuers whether or not they allow payment in more than four installments or impose a finance charge. The Board solicits comment on the necessity of making credit extended by use of a credit card open-end credit per se, in order to assure that card issuers comply with all applicable open-end credit requirements.

The present regulation excludes from the definition of open-end credit negotiated advances under an open-end real estate mortgage and letters of credit. The Board solicits comment on whether these exclusions are necessary, and on the impact of omitting them from the regulation, as reflected in the current proposal.

"Periodic rate" in § 226.2(v) combines the present terms "period" (current § 226.2(z)) and "periodic rate" (current § 226.2(aa)). The draft has been amended to emphasize that an initial transaction charge (even if computed on the basis of a percentage of the transaction amount) is not a periodic rate for purposes of the regulation. The Board particularly solicits comment regarding one aspect of the proposed definition. Currently, a creditor may use any subdivision of a year in applying its rate and a number of creditors use 1/360 of a year as their period. Use of this subdivision may create difficulties in computing the annual percentage rate, as for example by applying a daily rate based on 360 days to a 365-day year. The Board is considering amending the definition to preclude the use of any period other than a day, week, or month as the basis for the periodic rate and solicits comment on any computational or state law problems which might arise from such a prohibition.

The definition also provides that the periodic rate may be stated either as a percentage or as its decimal equivalent. It should be noted, however, that the corresponding annual percentage rate must always be stated as a percentage.

The definition of "person" in § 226.2(w) implements § 103 (c) and (d) of the act, by combining the statutory definitions of "persons" and "organization." The list of types of organizations in the proposal is illustrative only and is not intended to be all-inclusive.

"Personal property" and "realized value," as defined in § 226.2 (x) and (y), respectively, are similar to their counterparts in the current leasing provisions of the regulation. However, the definition of "realized value" has been clarified to permit the use of either wholesale or retail fair market value, so long as the basis for this amount is consistent with the basis used for determining estimated value at consummation.

The definition of "required deposit balance" in § 226.2(z) is drawn, in substantially modified form, from the current § 226.8(e)(2). Under the proposal, this item no longer is to be disclosed. However, these amounts would continue to affect the calculation of the annual percentage rate in closed-end credit transactions, as outlined in Supplement I (present § 226.40) to the regulation.

Under the revised definition, the number of deposits which would constitute required deposit balances has been substantially reduced. The concept was originally designed to reflect the loss of use of funds by the consumer in order to obtain credit. To better effectuate this goal, the definition would now be confined primarily to nonproductive funds, by excluding from its scope any amounts which will earn interest or dividends. Thus, even where the consumer is required to make or keep a specified deposit to obtain credit, the amount would not be considered a required deposit balance so long as the funds will earn interest or dividends. While the proposal makes no attempt to specify any minimum yield necessary to exclude these amount from the definition, it should be emphasized that creditors' actions in this regard would be measured against the general prohibition in § 226.1(e) against circumvention or evasion of the regulation. An unusually low rate of return could raise questions regarding the proper classification of these deposits. The Board specifically solicits comment on any difficulties which may arise from this exception to the required deposit balance definition, together with any possible alternatives to this approach.

The second exception to the required deposit balance definition incorporates and expands the current § 226.8(e)(2)(i). Escrow accounts for taxes and insurance, whether or not earning interest, would not be considered required deposit balances. Unlike the current escrow exception, the account need not be tied to a real property transaction. For example, property insurance escrows for mobile home transactions would be excluded, even in jurisdictions where mobile homes are classified as personal property.

The definition of "residential mortgage transaction" in § 226.2(aa), which implements amended § 103(w) of the act, has no counterpart in the current regulation. It covers the purchase or construction of a dwelling which, under a mortgage or similar consensual device, serves as security for the transaction. Junior liens as well as first liens are included in this category, provided they relate to the acquisition or initial construction. The term is important to three substantive provisions in the regulation. First, under § 226.11(f)(16), a disclosure regarding whether the obligation is assumable must be made in these transactions. Second, certain residential mortgage transactions are subject to the special rule on timing of disclosures contained in § 226.11(g). Third, these transactions as a class are exempt from the right of rescission under § 226.13(f)(1).

"Security interest" and "security," as defined in § 226.2(bb), are essentially unchanged in substance from the current § 226.2(gg). However, the list of types of charges has been taken from the text of the definition and placed in a footnote, to emphasize that the types mentioned are merely illustrative, rather than all-inclusive. Note that a right of set-off is included in the list. The new definition looks to applicable state law to determine what is a security interest. As under the current regulation, it is the responsibility of the creditor or lessor to decide whether its interest is recognized by and enforceable under that law.

"State" is defined as in the present § 226.2(h).

The "total lease obligation" definition in § 226.2(dd) of the proposal has been significantly amended from current § 226.2(rr) to incorporate the position taken by the staff in several official interpretations. Paragraph (dd)(1) clarifies that amounts that are not financed by the lessor or upon which no lease charge is assessed are not to be included in the total lease obligation.

Paragraph (dd)(2) reflects the fact that trade-ins or other advance payments are often made some time after consummation, at the time the leased property is actually ready for delivery. Under the proposal, any payments or trade-in made before delivery are included in the total lease obligation. Refundable security deposits are eliminated from the total lease obligation. Since security deposits will be identified and disclosed under proposed § 226.15(e)(4), inclusion in the total lease obligation as well appears to be unnecessary.

The rules of construction in § 226.2(ff), (gg), (hh), and (ii) are intended to assist in understanding the regulatory language and to permit abbreviated references. Footnotes are used extensively in the regulation to provide special exceptions, more detailed explanations, examples, and so forth; paragraph (ii) provides that footnotes have the same effect as the text.

Section 226.3—Exemptions

The principal change in this section is the exemption of agricultural credit from all regulatory requirements. This is in accord with the new statutory exemption for agricultural credit in § 104(1) of the amended act. The footnote makes clear that even if real property with a dwelling is acquired (for example, a farm with a house on it), the exemption will apply according to its terms.

Otherwise, the substance of proposed § 226.3 is essentially the same as the current version of that section, with the incorporation of several existing interpretations. The business credit exemption is qualified to reflect the fact that several credit card provisions do apply to business credit. The public utility credit exemption is clarified so as to apply to charges associated with services provided through radio transmission (for example, microwave telephone relays), but not to charges imposed in connection with the financing of home improvement or durable goods such as furnaces or telephones.

The securities and commodities credit exemption has been expanded to recognize the role of the Commodity Futures Trading Commission, which parallels that of the Securities and Exchange Commission.

Paragraph (e) incorporates all of the exemptions for lease transactions into a single provision. A new exemption is proposed for leases of safe deposit boxes and the Board solicits comment on this.

Section 226.4—Finance Charge

This section, like the current § 226.4, sets forth the rules governing the determination of the finance charge for both open-end and closed-end credit. However, it has been reorganized.

(a) *Definition.* This paragraph reiterates in condensed form the existing definition of what constitutes a finance charge. The last sentence of the paragraph reflects the recent amendment to § 106(a) of the act, and states explicitly that the finance charge does not include any charges that would be imposed uniformly in comparable cash and credit transactions—for example, sales taxes, license or registration fees, or basic checking account maintenance charges.

(b) *Charges included in the finance charge.* This paragraph contains a list of charges that are part of the finance charge, much as it appears in present § 226.4(a). These are examples of finance charges, and the list is not intended to be all-inclusive. Many of the items listed here *may* be excluded from the finance charge; the following paragraphs in the section spell out the special exclusion rules, for example for credit life and property insurance premiums, certain fees in real property transactions, and filing fees.

Paragraph (b)(2) includes examples of finance charges commonly imposed in open-end credit plans, such as minimum charges. It also clarifies that the portion of checking account maintenance fees that are attributable to the existence of a credit feature (for example, overdraft lines of credit) are included in the finance charge.

Footnote 4 includes the provision from present § 226.4(h) that insurance premiums should be included for the period that insurance must be maintained. The rule on applicable insurance rates and classifications in present § 226.4(h) has been deleted because it is part of the broader issue of making disclosures based on estimates; this matter is dealt with in new § 226.11(d).

Discounts to induce payment other than by use of credit are specifically mentioned in paragraph (b)(9) as part of the finance charge. It should be noted that a discount offered for prompt payment of a credit obligation (which is treated as a type of finance charge in present § 226.8(o)) would not be included in the finance charge under this provision. This change is based on the idea that the finance charge should reflect only the comparison between cash and credit transactions and should not be applied to distinctions made among credit customers. The Board would appreciate comments on this change.

(c) *Charges excluded from the finance charge.* This paragraph lists a number of fees and charges which are *not* part of the finance charge. Unlike the items covered by the two paragraphs that follow, the creditor need not make any disclosure of these items in order to exclude them from the finance charge.

Paragraphs (c) (1), (2), and (4) are condensed and rewritten versions of current § 226.4 (c), (d), and (e), respectively. Paragraph (c)(3) provides that where a fee is charged for membership in a credit card plan, that fee is not a finance charge. The Board is aware that such fees are becoming increasingly popular and that they are being imposed in a variety of ways. Comment is requested on whether this provision is appropriate and whether it should be qualified in any way.

(d) *Insurance.* This paragraph presents in one place all of the procedures necessary to exclude credit life, accident, health, loss of income, and property damage insurance premiums from the finance charge. It basically restates the rules applicable under the current regulation and Board interpretations. However, where the disclosed cost is subject to increase, that fact must also now be stated; the Board seeks comment on this new provision.

There are a number of provisions that should be noted. For example, the term of the insurance coverage must be stated only if it is shorter than the term of the transaction. The consumer who is the insured party is the one who is required to sign the statement indicating a desire for insurance. If more than one consumer is to be insured, however, any one of them may sign the statement on behalf of all of the insured consumers. The consumer's initials on the authorization form will be deemed to be a signature.

This paragraph eliminates the requirement in the current regulation that the credit life insurance authorization be dated. Since the authorization will now appear with all the other disclosures, there seems little need to require a separate date on the authorization.

Although single interest insurance as a general rule is included in the finance charge (see new § 226.4(b)(5)), under certain circumstances it may be treated like regular property insurance and excluded from the finance charge by following the procedures outlined in paragraph (d)(2). First, the single interest insurance must be the type that functions like regular, dual interest insurance; therefore, the so-called "blanket coverage VSI" that protects a creditor against loss on its entire portfolio would not qualify for this treatment and may not be excluded from the finance charge. Second, the insurer must waive all rights of subrogation against the consumer (although it may retain such rights against others). Note, however, that disclosure to the consumer of the waiver of subrogation is not required.

(e) *Itemized charges.* This paragraph allows certain charges having to do with security interests to be excluded from the finance charge, as long as they are itemized. Paragraph (e)(2) makes clear that only the amount of a "non-filing insurance" premium that does not exceed the usual filing fee is excludable; any excess must be included in the finance charge. If a creditor imposes charges representing both § 226.4(e)(1) fees and (e)(2) premiums, the entire amount of the premiums must be included in the finance charge.

Note that the other items listed in present § 226.4(b) (3) and (4) (taxes and license, certificate of title, and registration fees) have been deleted in light of the recent amendments to § 106 of the act.

(f) *Discounts.* This paragraph explains the conditions under which a discount offered for paying cash in lieu of using an open-end credit card account may be excluded from the finance charge. It restates in somewhat simpler form the rules found in present § 226.4(i). For example, it eliminates detailed directions on how the availability of the discount must be displayed in the seller's place of business, stating only that it must be clearly and conspicuously disclosed.

(g) *Prohibited offsets.* This paragraph restates the prohibition on offsetting interest earned by the consumer on deposits against finance charges paid by the consumer, which is found in present § 226.4(f). It eliminates the requirement that a creditor have a security interest in the consumer's property before the ban on offsets applies, because the rule logically applies whether or not the creditor holds a security interest.

Subpart B—Open-End Credit

This section deals with open-end credit accounts (for example, revolving credit, credit card accounts, overdraft and cash advance loans) and the disclosures required to be provided for such types of credit (proposed § 226.5). It also details special rules to be followed for credit card accounts (proposed § 226.6) and outlines the procedures to be followed where errors occur in open-end credit accounts (proposed § 226.7). This section also provides the rules for determining annual percentage rates for open-end credit accounts (proposed § 226.8). Section 226.9 of the proposal deals with rescission requirements as they apply to open-end credit. Finally, proposed § 226.10 deals with the rules for open-end credit advertising.

Model language is proposed in certain instances to facilitate compliance with the regulatory requirements. Comment is solicited on the model language and suggestions for improvement are encouraged. Also, it is requested that commenters, in reviewing the proposed regulation, identify provisions that would benefit from model language.

Most open-end credit Board Interpretations and many open-end credit staff interpretations have been addressed in the regulation. Two Board Interpretations, § 226.703 and § 226.707, have not been incorporated into the regulation at this point. The Board is aware that interpretative problems may exist with regard to these two interpretations and expressly requests that comment be submitted identifying those problems and suggesting solutions to them. Suggestions for proper placement in the regulation would be most welcome.

Comment is also encouraged with regard to identifying staff interpretations that may be candidates for regulatory incorporation.

Section 226.5—Disclosures

(a) *General requirements.* The general housekeeping requirements relating to open-end credit have been assembled in § 226.5(a) of the proposed draft. In general, this section draws from several different sections of the present regulation and incorporates in one section of the regulation the timing and format requirements for the disclosures required upon opening an account (initial disclosures) and for the disclosures required to be given periodically (periodic statements).

Proposed § 226.5(a)(1) (Who must make disclosures to whom) clearly provides that only one creditor in a multiple creditor situation need make disclosures. It is contemplated that creditors will agree among themselves in a multiple creditor situation as to who will in fact provide the disclosures so as to achieve the desired result that the consumer receive one complete set of disclosures. Section 226.5(a)(1)(ii) corresponds in part to § 226.6(e) of the present regulation. The proposal enunciates the rule regarding multiple consumers and provides that where multiple consumers are involved, disclosures may be made to any one of the consumers who is primarily liable on the obligation. Where the right of rescission is applicable, however, the disclosures shall be made to *each* person who has the right to rescind.

Section 226.5(a)(2) of the proposal (What disclosures must be made) provides a brief, general summary of the disclosures that must be furnished and the procedures that must be followed in open-end credit plans.

Proposed § 226.5(a)(3)(i) deals with the general timing and form rules for open-end credit disclosures. This section corresponds to parts of § 226.6(a) and § 226.7(a) of the present regulation, retaining the requirements that required disclosures be made clearly and conspicuously in writing in a form that the consumer may keep. However, in order to facilitate the use of required terminology, the proposal, unlike the present regulation, permits the use of modifying or identifying language with required terminology. In doing so, the Board recognizes that such additional language may be necessary in order for the required terminology to be used effectively. Pluralization of required terminology is also expressly permitted so as to ease its use in certain contexts.

Section 226.5(a)(3)(ii) of the proposal corresponds to § 226.6(a) of the present regulation. The proposal provides that the terms "finance charge" and "annual percentage rate" are to be more conspicuous than other required terminology *only* when they are disclosed together with a corresponding amount or percentage rate. Examples of ways to make those terms more conspicuous, as discussed in several staff interpretations, are included in the proposed regulation.

Section 226.5(a)(4) of the proposal regarding the timing and form of the initial disclosures corresponds in part to the introductory language of § 226.7(a) of the present regulation and retains the provision that the initial disclosures be provided to the consumer before the first transaction is made under the plan. The proposed regulation incorporates the present staff position that the initial disclosures can be made on one or more pages of an integrated document. Where the initial disclosure statement is multi-page, it is suggested that the pages be numbered in sequential order and stapled together or otherwise affixed.

As provided in the present § 226.6(c), additional information can appear on or with the initial disclosures as long as the additional material does not contradict or detract attention from the required disclosures. (Note the discussion in Subpart E regarding the manner in which inconsistent state law is treated under the proposal.)

Proposed 226.5(a)(5) deals with the timing and format requirements for periodic statements. Paragraph (a)(5)(i) provides, as is presently the case under the existing regulation, that a periodic statement can be multi-page. Note the absence of any provision parallel to the present § 226.7(c) regarding the location of the periodic statement disclosures. In that the regulation already provides that disclosures be made "clearly and conspicuously," the Board believes that a provision parallel to the existing § 226.7(c) is unnecessary. The Board solicits comment on the consumer protection implications that may result from the absence of a provision parallel to § 226.7(c).

Section 226.5(a)(5)(ii) parallels the introductory language of the present § 226.7(b) and basically requires, like the present regulation, that a periodic statement be provided at the end of any cycle in which a debit or credit balance in excess of $1 exists in the account or on which a finance charge has been imposed. Language has been added to indicate that cycles can be no longer than quarterly and that periodic statements cannot, therefore, be provided any less frequently than quarterly. The proposal retains language waiving the periodic statement requirement where the creditor deems the account uncollectible. Language has been added in the proposal incorporating staff position that a creditor's following its standard procedures for uncollectible accounts shall be evidence that the creditor considers the account uncollectible.

Section 226.5(a)(5)(iii) corresponds to the present § 226.7(b)(1)(ix) regarding the timing of periodic statements when free-ride periods are involved. No substantive change is intended.

Section 226.5(a)(6) of the proposal deals with the basis of disclosures and the use of estimates. Paragraph (a)(6)(i) incorporates present staff position that disclosures (both the initial and periodic statement disclosures) be based on the assumption that the consumer will comply with the terms of the agreement. Language is included in the proposal, incorporating staff interpretations, that the disclosures should reflect the terms agreed upon even if they differ from the written obligation.

Paragraph (a)(6)(ii) of the proposal corresponds to § 226.6(f) of the present regulation and sets forth the rules regarding estimated disclosures where the information necessary to make accurate disclosures is unknown to the creditor at the time disclosures are made. This provision is more liberal than present § 226.6(f), which provides that estimates may be used only where disclosures were given at the latest possible time. The change has been made in order not to discourage creditors from providing disclosures earlier. As before, of course, the creditor is required to use the best available information, and the estimated disclosures must be designated as such.

Section 226.5(a)(7), which corresponds to § 226.6(g) of the present regulation, deals with the effect that subsequent events have on disclosures. Paragraph (a)(7)(i) of the proposal retains the existing regulatory provision that where a disclosure is rendered inaccurate as a result of an event that occurs after delivery of either the initial or periodic statement disclosures, the resulting inaccuracy would not constitute a violation of the regulation.

Paragraph (a)(7)(ii) provides that new disclosures may be required where disclosures already provided are later rendered inaccurate. Reference is made to § 226.5(i) dealing with changes in terms for guidance on when new disclosures should be provided. It is not anticipated that any new disclosures would be required where the inaccuracy results from the consumer's failure to perform his or her obligations.

Paragraph (a)(7)(iii) incorporates staff position that creditors can use inserts with outdated disclosure forms when a term change occurs until the form supply is exhausted. Needles to say, it is contemplated that the insert will clearly reference the disclosure provision(s) it replaces.

Attention is drawn to the fact that the proposal, unlike the present § 226.6(a), does not mandate that numerical amounts and percentages be represented in figures or that disclosures be made in any particular type size.

(b) *Initial disclosures.* The timing and format requirements for new account disclosures (the initial disclosures) on open-end credit accounts, located in § 226.7(a) of the present regulation, are set forth in § 226.5(a)(4) of the proposal (see discussion above). Section 226.5(b) of the proposal requires that the initial disclosures be made in terminology consistent with that required to be used on periodic statements. Thus the terms "previous balance," "payment," "credit," "periodic rate," "annual percentage rate," "finance charge," and "new balance" should be used where appropriate.

For clarity's sake, § 226.5(b)(1) of the proposal combines the disclosures relating to the imposition of finance charges into a single paragraph. To the extent that a creditor's open-end plan permits various types of credit transactions for which the finance charge may be computed differently, the disclosures required by this paragraph must clearly distinguish between types of transactions.

Section 226.5(b)(1)(i) corresponds to § 226.7(a)(1) of the present regulation and requires generally that the conditions under which a finance charge may be imposed be disclosed. Language has been added requiring a creditor to disclose specifically the absence of a "free-ride" period if its plan has no such period. This change implements new language in the amended act. Otherwise, no substantive change is intended.

Section 226.5(b)(1)(ii) of the proposal corresponds to § 226.7(a)(4) of the present regulation and requires that any periodic rate that may be imposed be disclosed, together with the range of balances to which it is applicable and its corresponding annual percentage rate. The material contained in footnote 6a of the present regulation dealing with minimum charges can be found in footnotes 17 and 19 of the proposal. Clarifying language has been added to indicate that where different periodic rates are applied to different types of transactions (for example, purchases and cash advances), that fact must be clearly explained. No substantive change in current requirements is intended.

Section 226.5(b)(1)(iii) of the proposal incorporates § 226.7(a)(2) of the current regulation dealing with the disclosure of the method of determining the balance upon which the finance charge may be computed. It makes clear that the method of computing the balance must be explained, and not merely identified by a shorthand phrase such as "previous balance method." Additional language, incorporating Board Interpretation § 226.706, has been added to the proposal indicating that the manner in which a creditor chooses to allocate payments and credits (for example, first to finance charges, second to purchases, and third to cash advances) need not be disclosed.

The Board requests comment on the model clauses in Appendix A which describe various methods used to compute balances. Comment is solicited about the extent to which they adequately (1) reflect methods being used by creditors, and (2) ensure that the disclosure of balance computation methods is meaningful to consumers.

Section 226.5(b)(1)(iv) of the proposal corresponds to § 226.7(a)(3) of the present regulation requiring an explanation of how the amount of any finance charges will be determined. No substantive change is intended; footnote 20 has been added, however, to provide examples of types of finance charges other than periodic rates.

Section 226.5(b)(2) of the proposal corresponds to § 226.7(a)(6) of the present regulation. Clarifying language has been added, in conformance with the amended act, to require disclosure of either the amount or the method of computing the amount of any charge other than a finance charge that may be imposed. Footnote 21 has been added to provide guidance regarding what constitutes an "other charge." Attention is drawn to the fact that charges for voluntary credit life insurance are specifically excluded. This represents a change in the staff's position. Insurance premiums must, of course, be identified as transactions on periodic statements in accordance with § 226.5(d) of the proposal.

Also specifically excluded from the concept of "other charges" are costs for which the consumer may be liable after credit privileges have been terminated as a result of the consumer's default. Currently, default charges such as attorney's fees and collection costs that are *automatically* imposed by the creditor are considered "other charges." Comment is solicited about the propriety of the changes in what is considered an "other charge," about the usefulness of the general definition contained in footnote 21, and about whether there are types of charges that should be included or excluded from the examples listed in footnote 21.

Section 226.5(b)(3) of the proposal corresponds to § 226.7(a)(7) of the present regulation. The proposed disclosure of a security interest differs substantially from current requirements and is patterned after language in the amended act. The proposal eliminates the need to disclose the conditions under which a security interest will be taken and to identify the type of security interest. In their place the proposal requires disclosure *about the property* that will be pledged as security. If an interest is or will be taken in all goods purchased on the account, that fact must be disclosed. If a security interest is taken in other property owned by the consumer, that fact and an identification of the property by item or type must be disclosed. The Board solicits comment on whether model clauses would be helpful for the security interest disclosure, and if so, requests that suggested language be submitted.

Section 226.5(b)(4) of the proposal corresponds to § 226.7(a)(8) of the current regulation. The proposal incorporates a staff position that permits creditors to disclose the *method* of computing the amount of any minimum payment required rather than the specific dollar amount. The words "minimum periodic payment" refer to the amount required to be paid at specified intervals in order that the account not be considered delinquent. In accordance § 226.5(a)(6) of the proposal dealing with the basis of disclosures, this determination is based on the assumption that the consumer will pay the obligation as scheduled. In other words, the disclosure of the minimum periodic payment need not contain language indicating, for example, that it is 10 percent of the new balance plus any amount delinquent or overdue from the previous month. Moreover, no requirement is to be inferred that the timing of minimum payments must coincide with receipt of periodic statements sent by the creditor. Thus, it is permissible, for example, to require minimum payments on a monthly basis and still maintain a quarterly billing cycle. Moreover, in accordance with present staff position, where a consumer opts for a voluntary payroll deduction arrangement that differs from the minimum periodic payment, the creditor can continue to disclose for purposes of § 226.5(b)(4) the minimum amount *required* rather than the voluntary payment schedule.

The proposal does not include a provision comparable to § 226.7(a)(5) of the current regulation regarding disclosure of the Comparative Index of Credit Cost. It has been eliminated in accordance with its deletion from the amended act.

Section 226.5(b)(5) of the proposal corresponds to § 226.7(a)(9) of the current regulation. The requirements for placement of the consumer rights notice have been eliminated in view of the fact that the proposal refrains from mandating specific locations for disclosures in an effort to encourage creativity in developing forms that are clear and understandable. Moreover, the Board regards the placement requirements and the corresponding "notice" language as unnecessary in light of the general requirement in § 226.5(a)(3) that disclosures be made clearly and conspicuously. The text of the notice itself is found in Appendix A and is offered merely as a model, not as required text (see discussion below). It has been rewritten in simpler language, and its length has been reduced by one-third. Paragraph 7 of the current notice, regarding a consumer's right to assert claims and defenses arising from credit card transactions, has been separately subtitled in the proposal to better distinguish it from the billing error provisions. As a whole, the proposed notice is intended to convey the same information to consumers as the current notice, but in a more brief and clear form.

Attention is drawn to the proposal's requirement that creditors provide consumers with a notice "substantially similar" to that in Appendix A. Currently, the regulation prescribes the exact text of the notice, and variation from that text is allowed only when portions are inapplicable and likely to be misleading. As stated above, under the proposal, the notice is offered merely as an example. As indicated by footnote 22 of the proposal, the Board intends to permit creditors to tailor the notice to apply more uniquely to their individual credit programs and to provide latitude for creditors that wish to personalize their forms or alter them further in light of plain English state laws. Comment is requested on whether and how the proposed notice can be improved to be simpler and more straightforward and to better meet the "plain English" standards mandated by some state statutes. The Board also requests comment on whether the expansion of the "substantially similar" standard will provide creditors sufficient flexibility while insuring meaningful disclosure to consumers.

Finally, the Board requests comment on the necessity of a creditor identification requirement on the initial disclosures. If more than one creditor exists, only one would have to be identified. Comment is solicited about the advisability, advantages, and disadvantages of requiring identification of the creditor of an open-end plan.

(c) *Periodic statements.* Section 226.5(c) requires that consumers be provided with periodic statements and sets out the items of information that must be disclosed on them. It corresponds to § 226.7(b)(1) of the existing regulation. The time, form, and applicability requirements previously contained in the introductory language of § 226.7(b)(1) now appear in § 226.5(a)(5).

Section 226.5(c)(1) which corresponds to § 226.7(b)(1)(i) of the existing regulation requires disclosure of the outstanding account balance at the beginning of the billing cycle, using the term "previous balance." No substantive change has been made in the proposal. Language incorporating present staff interpretation has been added, however, to indicate that, where more than one type of transaction can be made on the account (for example, purchases and cash advances), the creditor may, but is not required to, disclose a separate previous balance for each type of transaction.

Section 226.5(c)(2) of the proposal corresponds to § 226.7(b)(1)(ii) of the present regulation and requires that each credit extension be identified in accordance with the specific identification requirements of § 226.5(d) of the proposal (§ 226.7(k) of the existing regulation). While the language of this paragraph has been changed for purposes of clarity, no substantive changes have been made.

Section 226.5(c)(3) corresponds to the present § 226.7(b)(1)(iii) and requires that creditors disclose the amounts and dates of crediting any payment or other credit. Unlike the present regulation, the proposal does not require the specific identification of the type of credit. In accord with existing regulation, the proposal does not require the date of crediting if the time of crediting does not result in a finance or other charge.

As in the present § 226.7(b)(1)(v), § 226.5(c)(4) requires disclosure of any periodic rate used to compute finance charges and its corresponding annual percentage rate. Clarifying language has been added to indicate, as in the initial disclosures, that where different periodic rates are applied to different types of transactions, that fact must be clearly stated. The last sentence of the present § 226.7(b)(1)(v) has been deleted from the proposed § 226.5(c)(4) and included in footnote 24 to the proposed § 226.5(c)(5) (Other types of finance charges). The present footnote 9a (referencing the last sentence of existing § 226.7(b)(1)(v) has been more appropriately placed in proposed paragraph (c)(4) and is numbered footnote 23 in the proposal.

As in the existing regulation, proposed paragraph (c)(4) contains alternative terminology for identifying the corresponding annual percentage rate. The Board questions, however, whether all of the alternatives are necessary and requests comment as to which terminology should be retained.

Section 226.5(c)(5), requires disclosure of the amount or method of computing the amount of any other type of finance charge that may be imposed. It incorporates the Board's position that, where minimum charges may be imposed on an account (see present § 226.7(b)(1)(v)), the amount of that charge must be disclosed. Likewise, where other types of finance charges, such as transaction or activity charges may also be imposed, those charges should also be disclosed. Footnote 24 to the proposed paragraph (c)(5) gives examples of the types of finance charges that would be disclosed pursuant to this paragraph. Included in the footnote are checking account charges presently mentioned as finance charges in footnote 9 to the present § 226.7(b)(1)(iv).

For a billing cycle in which a finance charge is imposed, § 226.5(c)(6), which corresponds to § 226.7(b)(1)(viii) of the present regulation, requires a creditor to disclose the dollar amount of the balance on which the finance charge was computed. If an account reflects more than one type of transaction subject to different periodic rates (for example, 1½% per month on purchases and 1% per month on cash advances), a separate balance must be disclosed for each type. Where the same periodic rate is applied to both purchases and cash advances, there is no need to disclose separately the balance for purchases and the balance for cash advances. Separate disclosure of the balances would not be prohibited, however. If more than one balance is used in computing the finance charge on a particular type of transaction (for example, a periodic rate is applied to the average daily balance of cash advances while a transaction charge is applied to the total amount of cash advances), each balance used in computing each finance charge component must be shown since the balance amounts would be different.

As the present § 226.7(b)(1)(viii) requires, the creditor must also explain how each balance was determined. As mentioned above, the Board solicits comment on model clauses provided in Appendix A in this regard.

Footnote 25 to the proposed paragraph 226.5(c)(6) incorporates Board Interpretation § 226.706 which makes clear that the creditor need not disclose how payments or other credits will be allocated. However, if a creditor does not deduct payments and credits in determining the balance on which the finance charge is imposed, the creditor is expressly required to disclose that fact and the amounts of such payments and credits. This does not mean that the dollar amount of such payments and credits must be specifically included in the explanation of the balance method. Listing the payments and credits under proposed paragraph (c)(3) together with an explanation of which payments and credits will not be deducted in determining the balance method would suffice.

Proposed paragraph (c)(7), which corresponds to § 226.7(b)(1)(iv) of the present regulation, requires that the creditor disclose the amount of the finance charge debited or added to the account during the billing cycle. It continues the existing statutory and regulatory requirement for disclosing the periodic rate component separately from the amount of any other type of finance charge. The proposal incorporates Board Interpretation § 226.701 which provides that, where there is more than one periodic rate, the rates need not be separately itemized and identified. Clarifying language indicates that other types of finance charges must continue to be individually itemized and identified.

Some creditors do not debit or add on finance charges during a cycle, but rather take accrued finance charges out of each payment. A footnote to paragraph (c)(7) incorporates a staff interpretation and makes clear that such creditors need not disclose any finance charges that may have accrued between the date of the last payment and the closing date of the cycle.

The examples of finance charges listed in the existing § 226.7(b)(1)(iv) are, as mentioned above, reflected in footnote 24 to proposed § 226.5(c)(5).

Proposed § 226.5(c)(8) corresponds to § 226.7(b)(1)(vi) of the existing regulation and requires that the annual percentage rate be disclosed (in accordance with proposed § 226.8) whenever a finance charge is imposed during the billing cycle. Language has been added to address those instances where an annual percentage rate cannot be determined (for example, where a minimum charge is imposed and the balance on which the finance charge is to be imposed is zero]. In such instances, it is contemplated that the creditor shall disclose the fact that a minimum finance charge is being imposed but that no meaningful annual percentage rate can be determined. The Board is aware that a similar problem exists where a minimum charge is applied to a very small balance. The Board solicits comment on alternative approaches that may be used in both instances.

Present staff interpretation requires that charges other than finance charges that are imposed be reflected as transactions on the periodic statement. Proposed § 226.5(c)(9) implements this staff position and requires that the amounts of any charges other than finance charges that are debited to the account during the billing cycle be itemized and identified. This paragraph does not require that the date of imposing or debiting the amount be disclosed. Moreover, the creditor need not disclose the amount or method of computing the amount of any such charge that *may* be imposed; this paragraph requires disclosure of only those charges that were in fact imposed.

To facilitate its use, § 226.7(b)(1)(ix) has been divided into two separate sections in the proposed regulation—§§ 226.5(c)(10) and (11). Section 226.5(c)(10) requires disclosure of the closing date of the billing cycle and of the new balance. Language has been added to permit the creditor to disclose a new balance for each type of transaction (for example, purchases and cash advances) if the creditor so desires. Section 226.5(c)(11) deals with the disclosure of any free period permitted. No substantive change in these provisions is intended.

Proposed § 226.5(c)(12) parallels § 226.7(b)(1)(x) of the existing regulation which requires that an address be provided on the periodic statement for use in submitting billing error inquiries. Language has been added indicating that this address may be provided by inclusion in the alternative billing rights statement permitted by § 226.5(e)(2).

Note that present § 226.7(b)(1)(viii) dealing with the Comparative Index of Credit Cost has no parallel provision in the proposal. As mentioned earlier, it has been deleted in the amended act.

(d) *Identification of transactions.* This section of the proposal corresponds to § 226.7(k) of the current regulation which deals with the identification of transactions. Very few substantive changes are reflected in the proposal, although it has been significantly reorganized to facilitate its use. Note that footnote 27 has been added to the proposal to draw attention to language in the amended act regarding the liability implications for failure to comply with the identification provisions.

The rules for identifying transactions on periodic statements vary depending upon three factors: (1) whether the transaction involves a purchase or a cash advance; (2) whether a copy of the document evidencing the transaction accompanies the statement; and (3) whether the creditor and seller are the same or related persons. The proposal separately groups the rules for each situation.

Section 226.5(d)(1) of the proposal specifies identification requirements for purchase transactions. Paragraph (d)(1)(i) applies when "country club" billing is used; paragraph (d)(1)(ii) applies when descriptive billing is used and the creditor and seller are the same or related persons; and paragraph (d)(1)(iii) applies when descriptive billing is used and the creditor and seller are unrelated. These three subsections correspond, respectively, to §§ 226.7(k)(1), (k)(2)(i), and (k)(2)(ii).

Footnote 28 of the proposal states the rule currently contained in § 226.7(k)(6)(i) concerning the creditor's reliance on information supplied by a seller. Footnote 29 of the proposal correponds to footnote 9b in the current regulation dealing with related persons, and has been expanded in two respects. First, in deciding whether the creditor and seller are "related" persons, the fact that there exists a corporate connection between the two will not make them "related" if that connection is not obvious from the names they use in doing business. Second, a creditor may consider itself "related" to a seller for purposes of transaction identification if the sales transaction being described resulted from promotional material mailed to the consumer by the creditor (commonly, advertisements accompanying a periodic statement). These two rules represent staff interpretations of the current "related" standard, and comment is solicited as to the reasonableness of the interpretations in light of the purpose of the section; *viz.* to enable consumers to identify transactions reflected on their periodic statements.

Footnote 30 of the proposal corresponds to footnote 9d in the present regulation. The current language permitting identification to be made on a slip accompanying the periodic statement has been deleted as unnecessary since the periodic statement may comprise more than one page. Footnote 31 establishes an exception to the property identification requirements for certain creditors that are also sellers and that use descriptive billing on their periodic statements. Small (i.e., having less than 15,000 accounts) creditors that provide their customers with copies of charge slips at the point of sale may disclose their name and the location of the transaction in lieu of identifying the property purchased. If this alternative is used, however, the creditor must treat its description as being in error if a consumer submits a billing error notice concerning the transaction (see discussion in next paragraph). This alternative has been added to implement language in the amended act.

Attention is drawn to the change of language in § 226.5(d)(1)(ii)(B) of the proposal relating to the treatment of a "notice of a billing error" (as described in § 226.7(b) of the proposal and which corresponds to the existing regulation's "proper written notification of a billing error") in which a consumer questions a transaction identified by a number or symbol, rather than by a description of the property purchased. The current regulation, in § 226.7(k)(2)(ii), requires that such an inquiry be treated as an "erroneous billing" (i.e., no charges may be imposed as a consequence of a transaction's being in dispute, whether or not there is, in fact, a mistake on the consumer's statement). While the proposal does not use the phrase "erroneous billing," its requirement that the account be corrected "in accordance with § 226.7(e)(1)" is intended to mandate the same treatment. It should be noted that *any* consumer allegation of error regarding the transactions must be accorded special treatment. The allegation need not relate to the alternative identifying information that the creditor has used on its periodic statements.

Footnote 32 in the proposal incorporates the rule contained in § 226.7(k)(6)(i) of the current regulation, and expresses a staff position that for mail order transactions the date of debiting may be considered the transaction date for disclosure purposes. Footnote 33 contains the rule currently found in § 226.7(k)(6)(iii) regarding disclosure of the seller's name. Footnote 34 of the proposal corresponds to § 226.7(k)(6)(ii) of the current regulation with regard to providing information where no meaningful address is available. It contains the same requirements except that the proviso about disclosures made or omitted for purposes of circumventing or evading the regulation has been deleted as unnecessary in light of the language in § 226.1(e) of the proposal.

Section 226.5(d)(2) of the proposal relates to nonsale credit, and paragraphs (d)(2)(i) and (ii) restate the rules found in §§ 226.7(k)(3)(i) and (ii) respectively. With respect to the amount of a transaction required to be disclosed by proposed paragraph (d)(2)(ii)(B), in the case of an amount debited to an account under an overdraft checking plan, the amount to be disclosed is the amount of the credit extension, not necessarily the face amount of the check. Paragraph (d)(2)(ii)(C) replaces the "erroneous billing" language with a reference to § 226.7(e)(1) of the proposal (see discussion above). Footnote 35 of the proposal corresponds to footnote 9e of the current regulation regarding the debiting date being considered the transaction date for identification purposes for overdraft checking plans.

Section 226.5(d)(3) of the proposal, which relates to transactions billed in precomputed installments, changes both the requirement of footnote 9c of the current regulation and the current staff position. The new section would require that on the first periodic statement where a precomputed portion of a transaction is billed, the transaction date and total transaction amount (together with other identifying disclosures) must be disclosed. Thus, if a $100 purchase is billed as $20 on five statements, the first statement must give full identification of the transaction. There would be no specific requirement for identification of the $20 debits on the four subsequent statements. Footnote 36 gives an example of the section's applicability. Comment is solicited on whether this new section facilitates compliance, better informs the consumer, and is operationally feasible, and whether sufficient information will be provided to consumers to avoid confusion about transactions not billed in full.

Section 226.5(d)(4) of the proposal reflects the rules contained in § 226.7(k)(4) of the current regulation regarding information unavailable to the creditor despite the maintenance of procedures reasonably adopted to procure the required information. Again, the reference to "erroneous billing" has been replaced with a requirement to correct the account in accordance with § 226.7(e)(1) of the proposal (see discussion above).

Section 226.5(d)(5) of the proposal, regarding foreign transactions, corresponds to § 226.7(k)(5) of the current regulation with no change intended. Section 226.7(k)(7) of the current regulation, a transition provision, has been eliminated because it contains rules that are now outdated.

(e) *Routine furnishing of billing rights statement.* Section 226.5(e) of the proposal corresponds to § 226.7(d) of the current regulation. To implement the amended act, paragraph (e)(1) of the proposal contains the new requirement that the long form billing rights statement required by § 226.5(c)(5) be sent at least once per calendar year, at intervals of not less than six months and no more than 18 months. Currently, the regulation requires semi-annual statements. In addition, the proposal's use of the phrase "at least once" is intended to mean that a creditor may choose to send the notice as frequently as desired. Thus § 226.7(d)(4) of the current regulation has been deleted. Section 226.5(d)(3) of the current regulation regarding altering the cycle for providing semiannual statements has been eliminated in light of the amended act's provisions.

As in the current regulation, the proposal mandates delivery of the statement only to consumers who are entitled to receive periodic statements for the billing cycle selected by the creditor. Because § 226.7(d)(2)(ii) simply restates this rule as applied to new customers, it has been deleted as redundant. In light of the fact that the billing error rights statement need only be provided annually, comment is solicited on whether delivery of the billing rights statement should be required to be furnished to all consumers (as is the case in the electronic fund transfers regulation) or only to those entitled to receive periodic statements for the particular cycle selected by the creditor (as is presently the case under the current Regulation Z).

Section 226.5(e)(2) of the proposal corresponds to § 226.7(d)(5) of the current regulation, and gives creditors the alternative of providing consumers with a summary explanation of their rights on or with each periodic statement. In order to offer a creditor greater flexibility where there is limited space on its periodic statement, language has been added permitting the summary statement to appear on the portion of a periodic statement that must be returned to the creditor (with payment, for example).

A sample text of the summary statement is found in the Appendix. It has been revised to be simpler, briefer, and more straightforward. The "substantially similar" standard that governs the long form notice required to be given with the initial account disclosures is also applicable to the summary notice, as referenced by footnote 37 of the proposal (see discussion If § 226.5(b)(5) above).

Comment is solicited as to ways in which the summary statement might be improved.

The rules currently in Board Interpretation § 226.708 regarding the transition from a creditor's use of one form of billing rights statement to another are no longer accurate in light of the changes made in the amended act. Comment is solicited about problems that creditors might encounter in changing from the long to the short billing rights statement under the new provisions regarding annual notice.

(f) *Supplemental credit devices.* Section 226.5(f) of the proposal corresponds to § 226.7(j) of the current regulation. Other than the fact that proposed footnote 38 contains material now found in the body of the regulation this section reflects two substantive changes.

First, the proposal would impose a requirement of sending specified disclosures for only those supplemental credit devices that are provided on an *unsolicited* basis or whose finance charge terms are different than those previously disclosed. This presumes that a consumer who has requested a supplemental credit device is aware that use of the device is related to an open-end account, and will result in an extension of credit. Second, the proposal would also eliminate the current restriction that the required disclosures cannot appear on promotional material delivered with the credit device, but would require highlighting the disclosures when they are included in such material.

(g) *Prompt crediting of payments.* Present § 226.7(g) requires that a consumer's account be credited as of the date a payment is received regardless of the date the payment is posted, and, in paragraph (g)(2), permits the creditor to specify reasonable requirements with respect to the form, amount, manner, location and time for receipt of payments. If the creditor specifies requirements for receipt of payments under (g)(2) and the consumer does not comply with those instructions, the creditor is relieved of the duty to credit the payment as of the date of receipt; however, the regulation in its present form does not specify the time period within which the payment must be credited. The Board proposes that a sentence be added to § 226.5(g)(2) to require that, when a creditor has established reasonable requirements under that paragraph and a payment is received which does not conform to the creditor's specifications the payment must be credited as soon as possible, but in no event later than five business days from receipt.

The language of (g)(2)(ii) relating to presentment of payments has been eliminated to make the paragraph consistent with other provisions of (g) which provide for crediting as of the date of receipt or within a certain time thereafter.

The word "properly" has been deleted from the first part of paragraph (g) because the relationship between the creditor's duty to credit the payment as of the date of receipt and the provisos of paragraphs (1)-(4) is clear without it.

Currently, § 226.7(g)(3) and (4) require that under certain circumstances a payment need not be credited as of the date of receipt but must be credited "promptly" and, under (g)(3), no later than five days from the date of receipt. The proposal incorporates a staff interpretation in changing the word "promptly" to "as soon as possible." The Board believes that the proposed language is a clearer statement of the present requirement that the creditor must credit the consumer's account as soon as it is capable of doing so and, under (g)(3), no later than five days from the date of receipt of the payment.

The remainder of (g)(1), (3), and (4) is essentially unchanged from the present regulation.

Existing paragraph (g)(5) is a transitional paragraph and has been deleted from the proposal.

Proposed footnote 39 addresses the question of when a payment must be credited to a consumer's account if regular payroll deductions have been deposited into a share, escrow or similar account and are later applied by agreement, in whole or in part, as a periodic payment to the consumer's account. In the staff's opinion, if the payroll deductions are authorized by the consumer, and are not required as a condition of the extension of credit, and the consumer retains the right to withdraw any or all of the funds up until the time the periodic payment is withdrawn by the creditor, the payment may be credited as of the date it is withdrawn from the share, escrow or similar account and not the date that the regular payroll deduction was made. Footnote 39 incorporates the staff's position in this regard. It has been drafted in broader terms to cover other than payroll deductions (for example, deductions from demand deposit or other accounts).

(h) *Treatment of credit balances.* Section 226.5(h) establishes requirements for the treatment of credit balances and incorporates substantive changes to the existing regulation corresponding to § 165 of the amended act.

The amended section of the act now provides that a credit balance in excess of $1 created by (1) transmittal of funds in excess of the total balance due on the account, (2) rebates of unearned finance charges or insurance premiums, or (3) amounts otherwise owed to or held for the benefit of an obligor must either be credited to the consumer's account or refunded upon the consumer's request.

Proposed § 226.5(h) states that whenever the creditor receives a payment or other credit which exceeds the new balance (as determined by § 226.5(c)(10)) by $1 or more, the creditor must either credit the account with an amount equal to the new balance and refund the excess amount, or credit the entire amount of the payment or credit to the account. If the consumer later requests a refund of a credit balance of $1 or more the creditor must refund it.

The Board is aware that creditors may wish to refund credit balances on consumer's accounts in order to be relieved of the duty to provide periodic statements under § 226.5(c). The Board believes that it is clear without specific regulatory language that a creditor may refund the full amount of any credit balance, at any time, after having complied with the requirements of § 226.5(h).

Section 226.5(h)(2) incorporates in the regulation the requirement imposed by § 165 of the amended act that the creditor make a good faith effort to refund credit balances that remain in an account for more than six months.

(i) *Change in terms.* Section 226.5(i) outlines the requirements for notifying consumers in the event a creditor makes a change in the terms of a consumer's account. The proposed draft reflects a restructuring of the existing regulation and incorporates a number of substantive changes.

The existing regulation requires that notice of a change in a term previously disclosed be sent to consumers who are entitled to receive a periodic statement 15 days prior to the billing cycle in which the change takes place and to any consumer who subsequently activates his or her account. If the change in terms is an increase in periodic rate(s), or in any minimum, fixed, check service, transaction, activity or similar charge, notice must be sent to all consumers whether or not they are entitled to receive a periodic statement.

Proposed § 226.5(i)(1) reflects a change in the timing of delivery of the notice of change in terms from the present requirement of 15 days prior to the billing cycle in which the change will be effective to 15 days prior to the effective date of the change. This standard is consistent with the requirement of the Electronic Fund Transfer Act and Regulation E. Comment is solicited as to whether the 15 day time period should be changed to 21 days to coincide with Regulation E. The Board is concerned that the inconsistency between the two regulations in the number of days required for notice may unnecessarily complicate compliance.

Present staff interpretation is that a § 226.7(f) change in terms notice must be provided whenever a change occurs in one of the initial disclosures. Similarly, the proposal provides that whenever a term required to be disclosed under proposed § 226.5(b) is changed, a written disclosure of the change must be furnished to the consumer. Section 226.5(i)(1) further provides, unlike current regulatory interpretation, that no disclosure is required when the change involves late payment charges, charges for documentary evidence or over-the-limit charges. It also provides that no change in terms disclosure is necessary where there is a change in collateral requirements (subject, of course, to the rescission provisions of proposed § 226.9, if applicable).

Section 226.5(i)(1) incorporates a staff position that provides that only those consumers whose accounts will be affected by the change in terms need be notified. For example, if a creditor offers an overdraft credit plan to a small number of consumers and proposes a change in the terms of the overdraft plan, notice of the change in terms need be sent only to those who participate in the overdraft plan.

The existing § 226.7(f) does not require notice of a change in terms if the change is a reduction in the minimum periodic payment, periodic rate or rates, or in any minimum, fixed, check service, transaction, activity, or similar charge applicable to the account. Proposed § 226.5(i)(2) retains this exception. Paragraph (i)(2) also incorporates staff position in that it excludes from the notice requirement the suspension or termination of credit privileges. To the extent that it is applicable, Regulation B affords protection through its requirement that a creditor notify a consumer of adverse action taken on an account.

In light of the above discussed changes, proposed § 226.5(i) eliminates the distinction between the type of change in terms that requires notice to each consumer and the type of a change in terms that requires notice to only those consumers entitled to receive periodic statements.

Note that it is the Board's intention to rescind Board Interpretation § 705 which provides, in certain circumstances, that a change in terms notice is not required when changing the balance computation method. Although a change in a balance computation method *may* result in a decrease in finance charges, depending on a consumer's use of and payment on the account, the Board believes that reliance on consumer behavior in determining whether the change in terms provision applies is impractical. Consequently, the Board contemplates that, under the § 226.5(i), a change in balance computation method would require a change in terms notice.

Paragraph (i)(3) is new and incorporates several staff interpretations addressing the conversion of closed-end to open-end credit and open-end to closed-end credit. In such instances, if a written agreement signed by the consumer is involved, the creditor shall provide the applicable disclosures under either proposed § 226.5(b) or § 226.11(f)(2), (3) and (4). Where open-end credit is terminated but not converted to closed-end credit, the creditor is required to continue providing periodic statements and to follow the error resolution procedures of proposed § 226.7. Creditors must determine whether the action they take as to an existing account or loan constitutes conversion. Conversion may occur, for example, when an open-end account is terminated and a new agreement is signed providing for a certain number of installments and a definite maturity date.

Paragraph (i)(4) is new and states that a change in terms notice is not required if the change results directly or indirectly from the consumer's default or delinquency unless the periodic rate or other finance charge is increased. If the creditor increases the periodic rate or any other finance charge, the creditor must notify the consumer of that fact in writing but is not required to do so within the time limitations of paragraph (i)(1).

Paragraph (i)(5) is also new. It reflects staff opinion that any agreement approved by a court does not require disclosure.

Staff opinion has always been that a new initial disclosure statement can be provided in lieu of a change in terms notice, as long as it is properly timed. Comment is solicited on whether such an interpretation should be reflected in the regulation. Comment is also solicited on whether the changed terms should be highlighted or referenced when an initial disclosure statement is used.

(j) *Finance charge imposed at the time of transaction.* Proposed 226.5(j)(1) requires that certain disclosures be given by persons honoring a consumer's credit card who impose a finance charge which is not excepted by § 226.4(i) (Discounts for payment in cash) at the time of honoring a consumer's credit card. With the exception of the addition of some clarifying language, the paragraph is unchanged from the regulation.

Section 226.5(j)(2) has been changed to incorporate staff position that the creditor of the open-end account, if other than the person honoring the consumer's credit card, has no responsibilities for the disclosures required under paragraph (j)(1). The paragraph is otherwise unchanged.

Section 226.6—Credit Card Provisions

(a) *Issuance of credit cards.* Section 226.6(a), which parallels § 226.13(a) of the present regulation, sets forth restrictions on the distribution of credit cards. A number of changes are reflected in the proposal.

First, the introductory language in § 226.6(a) has been revised for purposes of brevity and clarity, but no substantive change is intended.

Second, § 226.13(a)(1) of the present regulation, now § 226.6(a)(1) of the proposal, has been revised and a footnote has been added to it. The words "by that person" have been added, to indicate that card issuers may send a credit card only to the person who requests or applies for the card. Proposed footnote 40 incorporates into the regulation some principles stated in existing staff interpretations. The Board is aware that there has been considerable discussion concerning the proper interpretation of Truth in Lending rules on issuance of credit cards (for example, in what names may cards be issued). The Board solicits comment on this proposal, as well as on the subject ot issuance generally.

Lastly, § 226.6(a)(2) would be amended by the addition of a footnote and some additional material in the body of the provision. Proposed footnote 41 sets forth the definition of "accepted credit card," which is essentially the same as in present § 226.2, with changes made as appropriate to reflect changes to § 226.6(a). Additional language in § 226.6(a)(2) adopts as part of the regulation various staff interpretations.

(b) *Liability of cardholder for unauthorized use.* Section 226.6(b) contains the rules concerning liability for unauthorized use of credit cards, and replaces §§ 226.13 (b) through (h) of existing Regulation Z. Through deletion of obsolete material, transfer of some model disclosure language to the Appendix, replacement of some material by a reference to a provision of the act, and greater economy in use of words, proposed § 226.6(b) is considerably more concise than the provisions it would replace. Some of the more noteworthy changes are as follows.

Footnote 42 to § 26.6(b) references § 133(b) of the act for rules on burdens of proof and replaces § 226.13(f). Section 226.6(b)(1), which states the maximum limits on the amount of a cardholder's liability for unauthorized use, would take the place of existing § 226.13(b)(2). Footnote 43 sets forth the definition of "unauthorized use" in virtually the same language as appears in § 226.2 of present Regulation Z.

Section 226.6(b)(2) states the conditions that must be fulfilled in order for a card issuer to impose any liability on a cardholder for unauthorized use. It groups together in one place the provisions of existing § 226.13 (b)(1), (b)(3), (c), and in part, (d), as well as a provision implementing an amendment to § 133(a) of the act.

Section 226.6(b)(2)(i) requires, as a condition of imposing liability, that the credit card used without authority be an accepted credit card. This provision continues existing § 226.13(b)(1) without change.

Section 226.6(b)(2)(ii) specifies as a liability condition that the card issuer must have given adequate notice of the cardholder's maximum liability. This condition appears as § 226.13(b)(3) of existing Regulation Z. The proposed provision also provides details on what information the notice must and may contain. These details are set forth in existing § 226.13(d). (Section 226.13(d) also contains a sample notice, which in this proposal appears in Appendix A.) Finally, proposed footnote 44 defines "adequate notice"; in the existing regulation, this definition appears in § 226.2.

Section 226.6(b)(2)(iii) embodies an amendment to § 133(a) of the act. The act formerly mandated that, in order to impose liability for unauthorized use, a card issuer provide cardholders with a self-addressed, prestamped form that cardholders could use to give notice of loss or theft of a credit card. That requirement is reflected in existing § 226.13(b)(4). The amended act now requires instead that the card issuer give cardholders "a description of a means by which the card issuer may be notified of loss or theft of the card," either on the periodic statement or on a separate notice accompanying the statement. Section 226.6(b)(2)(iii) would implement this new statutory provision by requiring disclosure, on or with the periodic statement immediately preceding the unauthorized use, of the telephone number and address of the person or office to receive notification. Comment is solicited on whether the proposed language correctly reflects the intent of the statutory amendment, as to both the time and content of the disclosure.

Section 226.6(b)(2)(iv) requires, as a condition of imposing liability, that the card issuer provide a means of identifying the cardholder. This corresponds to existing § 226.13(c). There are two changes of substance. First, obsolete transition provisions have been deleted. Second, § 226.13(c) refers to identification of the user of the card, while the proposed version would require identification of "the person to whom the credit card was issued." This change makes the proposed provision parallel to the provisions in Regulation E (the electronic fund transfer regulation) concerning liability for unauthorized use of debit cards. The Regulation E provision permits a single identifier (such as a PIN, or secret numerical code) to be used by all persons who are account holders or users on a particular account. Using more than one identifier per account may not be feasible. Adopting a similar standard in Regulation Z might facilitate the use of combined debit/credit cards.

Section 226.6(b)(3) corresponds to the present § 226.13(e) concerning what constitutes notification to a card issuer of loss, theft, or possible unauthorized use. Other than the deletion of considerable excess verbiage, there are two respects in which the present and proposed versions differ. First, in accordance with an amendment to § 133(a) of the act, proposed § 226.6(b)(3) provides that notice is deemed given when such steps have been taken as may be necessary to furnish the card issuer with the information. The present regulation specifies that the person who must take steps necessary to furnish the information is the cardholder. Second, the steps to be taken, rather than those "reasonably required in the ordinary course of business" to provide the issuer with the pertinent information, would be those "reasonably necessary" to do so. Comment is solicited on the effect of these changes.

Section 226.6(b)(4) would replace existing § 226.13(g), concerning lesser liability limits set by state law or agreement. No change in meaning is intended.

Section 226.6(b)(5) deals with business use of credit cards, and corresponds to existing § 226.13(h). While the proposal is considerably shorter than the present version, no substantive change has been made.

(c) *Right of cardholder to assert claims or defenses against card issuer.* Section 226.6(c) deals with the right of a cardholder to assert against the card issuer claims and defenses relating to property or services purchased with a credit card, if the merchant fails to resolve satisfactorily the cardholder's complaint. The corresponding provision in existing Regulation Z is § 226.13(i). Most of the changes in this section are for the purpose of simplifying or clarifying the regulatory language, rather than for modifying substantive requirements. However, there are some substantive changes, as described below.

First, language has been added to § 226.6(c)(4) (corresponding to existing § 226.13(i)(3)) to indicate that the right to assert claims and defenses does not exist when a check guarantee card is used in connection with a check. The relevance of this addition can be shown by the following example: If a consumer purchases goods with a check, using a check guarantee card to permit the check to be accepted as payment by the merchant, and if the consumer's checking account has an overdraft line of credit that is drawn upon by the check, then the check guarantee card falls within the definition of "credit card." Thus, the goods would be "property . . . purchased with a credit card in a consumer credit transaction," and if any dispute occurs as to the goods and the merchant fails to resolve it, the consumer would appear to have the right to assert any claims or defenses against the card issuer.

There are several problems with this result. First, if the card issuer has no recourse to the merchant in case of a claim relating to property purchased, as may often be the case where check guarantee cards are concerned, the issuer, rather than the merchant, will be forced to bear the loss occasioned by the merchant's wrongdoing. In the case of credit cards in general, by contrast, the card issuer will ordinarily have the right, under an agreement with the merchant or otherwise, to charge back any item as to which there is a dispute traceable to the merchant.

Second, in many cases the consumer will not even know whether a particular check will trigger an extension of credit on the overdraft line, since several checks may be written in a short time span and checks may not clear in the order in which they were written. Some checks may have been written in connection with the check guarantee card, and others not. Thus, the consumer may not intend to use credit in making a particular purchase as to which a dispute later arises, although it may be that the check used in that transaction triggers an extension of credit.

In light of these considerations, it seems desirable to expressly exclude use of check guarantee cards from the requirements of § 226.6(c). This change embodies existing staff interpretations of the regulation.

Note that use of a check guarantee card that is also an ordinary credit card may remain subject to § 226.6(c). For example, where such a card is used to purchase goods or services, not in conjunction with a check but rather as an ordinary credit card, the right to assert claims or defenses would apply.

The Board solicits comment on this proposed exemption and on whether other types of transactions should be exempted from § 226.6(c). One such type of transaction might be the purchase of goods or services with a debit card that, in accessing the consumer's account, draws on an overdraft line of credit. Comments on this subject should also address whether the exemption should be afforded only to debit card transactions that are purely electronic, only to those that are paper-based, or to both.

Comment is also requested on whether the proposed language exempts purchases made with cash advance checks (i.e., special checks that, when used, result in extensions of credit on the consumer's open-end credit account). If such checks are used in conjunction with a card, § 226.6(c) would apply, unless the card is a "check guarantee card," in which case the proposed language would exempt transactions of this type. Whether or not the proposed exemption does cover such transactions, the Board also requests comment on whether they should be exempted.

Secton 226.6(c)(5) deals with the prohibition on adverse credit reports and has been revised so that the prohibition would take effect only when the card issuer knows or has reason to know that the claim or defense exists. If the issuer does not know of the dispute, and if the cardholder ceases payment, the card issuer has no way of knowing that it is prohibited from making an adverse credit report. Also, the material in present footnote 15a would be placed in the body of the regulation.

(d) *Offsets by card issuer prohibited.* Section 226.6(d) corresponds to existing § 226.13(j). The first change is the addition of the words "whether before or after termination of credit card privileges," to incorporate in the regulation the existing staff position that a creditor does not gain the right of offset where it not previously exist merely by terminating a consumer's credit card account.

Next, the phrase "unless a court order is obtained" has been deleted, but no change in substance is intended since existing footnote 16, which has been moved into the body of the regulation as § 226.6(d)(2), appears to give creditors the same rights as the deleted language. Proposed § 226.6(d)(2) contains language regarding obtaining or enforcing security interests in order to reflect the interpretation of the existing regulation viewing consensual security interests as distinct from the right of offset and, therefore, as permissible. Comment is solicited, however, on whether a security agreement in funds held on deposit with the card issuer should be required to be limited in any way in order to be distinct from the right of offset (for example, under existing staff interpretation, the security interest must be limited to a specific amount). An additional change in § 226.6(d)(2) indicates that a card issuer may obtain and enforce a security interest under federal law (if such a procedure is available), as well as under state law.

The language of existing § 226.13(j)(2)(i) is considerably abbreviated as it appears in § 226.6(d)(3), but no change in substance is intended. Present § 226.13(j)(2)(ii) is eliminated since it is obsolete.

Finally, a sentence would be added, as proposed § 226.6(d)(4), stating that card issuers may not obtain from consumers waivers of the prohibition against offsets, and that such waivers would be void if obtained.

(e) *Prompt notification of returns and crediting of refunds.* The changes to § 226.6(e) are primarily stylistic. Proposed § 226.6(e) corresponds to the present § 226.13(k). "As soon as possible" is substituted for "promptly" in two places in order to clarify the promptness standard.

(f) *Prohibited acts of card issuers.* There are two changes of note in § 226.6(f), which corresponds to § 226.13(l) of the present regulation. First, a footnote is added to indicate that the prohibition does not apply to requiring the maintenance of an account for clearing purposes, where this is essential to the operation of the credit card plan and where no minimum balances or service charges are imposed. This position is expressed in existing staff interpretations. Second, existing § 226.13(l)(2) is deleted as obsolete.

(g) *Prohibition of surcharges.* Section § 226.6(g) is transferred from existing § 226.4(i)(4). Since the prohibition of surcharges applies only where credit cards are used, it is more appropriately placed in this section, rather than in the section on determination of finance charges as is presently the case.

(h) Relation to Electronic Fund Transfer Act and Regulations. Section § 226.6(h) is new. It explains the relationship of § 226.6 to various sections of Regulation E, the Board's regulation governing electronic fund transfers, in circumstances involving credit cards that are also "access devices" under Regulation E (i.e., combined credit/debit cards). In cases involving these multi-function devices, it is not always clear whether Regulation E, Regulation Z, or both, apply.

Section § 226.6(h)(1) deals with the application of the two regulations in the area of unsolicited issuance of credit cards and access devices. Paragraph (1)(i) specifies what is governed by the unsolicited issuance restrictions of Regulation Z. Paragraph (1)(i)(B) provides that adding a credit capability to an accepted access device is considered to be, in effect, issuance of a credit card. Thus, Regulation Z applies, and the credit capability may not be added on an unsolicited basis. This is so even if the credit feature is being added when the accepted access device is renewed which, under Regulation E, may generally be done on an unsolicited basis.

Paragraph (1)(i)(C) deals with the issuance of combined credit card/access devices, and specifies that, with an exception set forth elsewhere in the paragraph, the Regulation Z restrictions apply. Since the Regulation Z rules on unsolicited issuance are stricter than those of Regulation E, it seems appropriate that Regulation Z apply to the issuance of devices with both credit and debit functions, in order to avoid undercutting the protections of Regulation Z designed for the credit function.

Paragraph (1)(ii) lists the acts that will be covered by Regulaiton E. Paragraph (1)(ii)(B) relates to the addition of an EFT capability to an accepted credit card. The same principle applies here as under paragraph (1)(i)(B), i.e., the addition of such a capability will be considered to be issuance of an access device, and therefore may not be done on an unsolicited basis unless the Regulation E rules are followed, even though the EFT capability is added during renewal of an accepted credit card.

Paragraph (1)(ii)(C) sets forth the exception to the rule stated in Paragraph (1)(i)(C). This is the one type of combined credit card/access device whose issuance is governed by Regulation E, rather than by Regulation Z. The excepted type is a credit/debit device whose only credit function is to permit extensions of credit on a preexisting overdraft line of credit (or similar line of credit designed to maintain a specified minimum balance in the consumer's checking account or other asset account). As explained below, the Electronic Fund Transfer Act provides for a somewhat similar exception where liability for unauthorized transfers is concerned; it appears desirable for the sake of uniformity to have the same exception apply in the area of unsolicited issuance.

Section 226.6(h)(2) deals with liability for unauthorized use of multifunction devices. The difference between this and the rules of unsolicited issuance discussed above is that the choice of which regulation applies in the case of liability depends upon the specific transaction, rather than upon the type of card or device involved. Essentially, when a transaction made with a combined credit/debit device is purely a credit transaction (i.e., no electronic fund transfer is involved), Regulation Z applies (paragraph (2)(i)); when a transaction is purely an EFT transaction, Regulation E applies (paragraph (2)(ii)(A)). When a transaction made with a combined device has both credit and EFT aspects, in that the transaction involves not only an electronic fund transfer but also an extension of credit under an overdraft or similar agreement, then Regulation E applies (paragraph (2)(ii)(B)). This appears to be the only possible type of transaction involving both credit and electronic fund transfer aspects in a single transaction, although the Board solicits comment on this point.

With respect to both § 226.6(h) (1) and (2), note that virtually identical provisions have already been adopted in final form as part of Regulation E (as §§ 205.5(c) and 205.6(d), respectively). Thus, any changes to the Regulation Z provisions proposed here would require parallel changes to the Regulation E provisions.

Section 226.6(h)(3) provides that the rules set forth in the balance of § 226.6 (other than the issuance and liability rules) apply to credit cards that also constitute access devices to the extent that those rules indicate. There are no provisions in Regulation E corresponding to these portions of § 226.6; therefore, choices between competing rules are not necessary. Paragraph (3) merely makes clear that although the credit card is also an access device, the provisions of § 226.6 (other than the issuance and liability rules) still apply.

Comment is solicited on whether greater specificity is desirable in delineating the applicability of §§ 226.6

(c) through (g) to the use of combined credit/debit devices.

Section 226.7—Billing error resolution.

Proposed § 226.7 deals with error resolution procedures and corresponds to §§ 226.2(j) 226.2(cc) and 226.14 of the present regulation. While few substantive changes are reflected in the proposal, substantial restructuring has been done in an effort to facilitate the use of these regulatory provisions.

(a) Definition of billing error. Section 226.7(a) corresponds to § 226.2(j) of the current regulation, and § 226.7(b) (Notice of a billing error) corresponds to existing § 226.2(cc) (Proper written notification of a billing error). In the proposal, these two definitions have been moved from the definitional section to the section on billing error resolution. The reason for this change is to compile in one section of the regulation all provisions relating to billing error resolution, including the proper steps that a consumer must take to allege billing errors and the steps that a creditor must take to resolve them.

The billing error definition language of proposed § 226.7(a) has been simplified and, where possible, modified to parallel the proposed billing error definition in the Electronic Fund Transfer regulation. One major change from the present regulation is that billing errors would be tied to activity in the account rather than reflections on the periodic statement. The consumer would be able to activate the billing error procedure upon learning about the problem with the account even if that knowledge predated receipt of a periodic statement. For example, if a consumer attempts to use a credit card, and is told that no extension will be approved because no payment has been received for the last two months, the consumer should be able to utilize the error resolution procedures by writing to the creditor and indicating that an error exists in the account because payments have always been made in a timely manner.

In general, the specific billing error definitions contained in §§ 226.7(a) (1) through (6) of the proposal reflect minor changes other than to indicate that billing errors need not appear on periodic statements before a consumer can trigger the error resolution procedures. Proposed § 226.7(a)(7) corresponds to § 226.2(j) (2) and (6) of the current regulation and reflects a substantive change, however. Under the current § 226.2(j)(6), the creditor's *failure* to mail or deliver a periodic statement is an error under the regulation. The Board believes that as a practical matter the event triggering the error resolution procedures should be the consumer's *request* for a copy of the periodic statement rather than the *failure* of the creditor to deliver it. In making this change, the Board seeks to eliminate the kinds of factual disputes that now arise. The Board contemplates that where the only billing error alleged is a consumer's request for a copy of the periodic statement, the creditor may resolve the error by supplying the copy of the statement in a timely manner (see footnote 47 to § 226.7(a)(7) of the proposed regulation in this regard).

Similarly, under § 226.7(a)(7), the Board believes that a consumer's request for documentation or other information concerning an extension of credit should activate the billing error resolution process, even where the consumer does not articulate any particular reason for believing that an error exists in the account. This position implements language in § 161(b)(2) of the act and parallels the electronic fund transfer regulation. The Board contemplates that resolution in these cases consists merely of supplying the documentation in a timely manner, which serves to diminish the burden to creditors (see footnote 47 to § 226.7(a)(7) of the proposal). Furthermore, the Board proposes to add language to the regulation, which incorporates present staff position, that a request for documentation or information for tax or business purposes does not activate the billing error resolution procedures.

(b) Notice of billing error. As stated above, § 226.7(b) of the proposal corresponds to § 226.2(cc) in the current regulation. The substance of the proposed provision is substantially the same as in the current regulation, and the form parallels the electronic fund transfer regulation. Language has been added to clarify that the consumer need not indicate the reasons for believing the account is in error, if the alleged error consists of the consumer's request for a copy of the periodic statement or any documentation, information, or clarification concerning an extension of credit. The provision has also been modified to eliminate the need for a billing error to appear on the periodic statement before the consumer can provide notice of a billing error and trigger the error resolution procedures (i.e., the consumer may assert that an error exists in the *account*).

(c) Time for resolution; general procedures. Proposed § 226.7(c) corresponds to § 226.14(a)(1) and the general timing requirements contained in § 226.14(a)(2). The last sentence has been added to incorporate the staff's present interpretation that a creditor may temporarily correct the consumer's account as long as the dispute is permanently resolved within the time limits set forth in proposed § 226.7(c)(2).

(d) Rules pending resolution. Section 226.7(d) of the proposal consolidates all the rights and duties of the consumer and the creditor pending final resolution of the dispute. Portions of this section correspond to parts of existing regulation §§ 226.14 (a) through (e).

Section 226.7(d)(1) of the proposal corresponds to § 226.14(b) of the current regulation and addresses the consumer's right to withhold the disputed amount pending resolution. Footnote 49 clarifies the meaning of the concept of "the amount in dispute."

Section 226.7(d)(2) (Creditor's handling of disputed amount) corresponds to § 226.14(b)(4) and the last sentence of § 226.14(d). This section adds clarifying language to indicate that, pending resolution, a creditor may transmit a periodic statement that reflects not only the disputed amount *but also finance or other charges computed on that amount*, provided the creditor indicates on the periodic statement that payment of the disputed amount and related charges is not required. In light of the general requirement that disclosures be made clearly and conspicuously, the proposal eliminates the present requirement that the consumer be so informed by language appearing *on the face* of the periodic statement.

Section 226.7(d)(3) (Action to collect disputed amount) corresponds to § 226.14(a)(2) and footnote 17 of the current regulation. This section implements the statutory mandate that the creditor resolve the dispute before taking any action to collect any portion of the amount indicated by the consumer as a billing error. The proposal retains the regulatory two-day grace period for the creditor; therefore, if the creditor inadvertently takes action to collect within two business days after receiving a notice of a billing error, the inadvertent action will not be considered a violation of the regulation. The proposal further provides that the creditor must promptly cease any collection activity and redress the results of the collection activity undertaken within the two-day period. The Board contemplates that appropriate corrective action could include, for example, notifying any individuals contacted in the collection action that the disputed amount is not delinquent, and refunding disputed amounts collected as a result of the collection action. Comment is solicited about the feasibility of such procedures.

Section 226.7(d)(4) (Adverse credit reports prohibited) corresponds to portions of current § 226.14(e). This paragraph provides that after receiving notice of the billing error the creditor may not make an adverse report to any person regarding the consumer's credit standing because of the consumer's failure to pay the amount specified as a billing error or any finance charges imposed on that amount. The proposal incorporates footnote 19 in the body of the regulation with regard to reporting a disputed amount or account as in dispute. The proposal retains the provision that, if the creditor within two business days after receiving notice of the billing error, inadvertently takes action prohibited by this provision the inadvertent action will not be considered a violation; however, the proposal conditions excusing the inadvertent action upon the creditor's prompt notification of all credit bureaus and other creditors, to the extent possible, to which adverse reports were made, that the disputed amount is not delinquent.

Section 226.7(d)(5) (Automatic debit of disputed amount) corresponds to § 226.14(c) of the current regulation with no substantive change intended. Attention is drawn, however, to § 913 of the Electronic Fund Transfer Act regarding the compulsory use of electronic fund transfers.

Section 226.7(d)(6) (Acceleration of debt; closing of accounts) combines the last sentence of § 226.14(b)(1) with the first sentence of § 226.14(d). The proposal provides that a creditor may not accelerate the consumer's debt or restrict or close an account for which a consumer has asserted a billing error, prior to complying with the requirements of this section.

(e) *Procedures after creditor determines that a billing error occured.* Section 226.9(e) corresponds to § 226.14(a)(2)(i) and § 226.14(b)(2) of the current Regulation Z and describes what a creditor must do if an incorrect billing has occurred. The proposal substitutes the phrase, "a billing error occurred" for the concept of "erroneous billing" as used in existing § 226.14(a)(2) and § 226.14(b)(2). A billing error occurs, for example, wherever there is a misidentification, insufficient identification or incorrect date of a transaction; improper crediting of payments or other credits; computation errors; a billing for property or services not accepted or delivered in accordance with any agreement; or mistakes in dollar amounts. The Board solicits comment on whether the term "erroneous billing" is necessary to define the concept of when an actual mistake has occurred, or whether the proposal clearly indicates when corrective action is required.

The proposed paragraph (e) also lists the steps a creditor must take when a billing error occurs, including correcting the error and mailing or delivering a notice of the corrections to the consumer. The proposal incorporates in the body of the regulation existing footnote 18 and provides that a notice on the periodic billing statement that is mailed within the time for resolution and that clearly identifies the correction is sufficient. The Board contemplates that the amount of the correction will be identified by stating that it is a correction of a billing error, rather than merely identifying the correction as a credit to the account.

(f) *Proceedings after creditor determines no billing error occurred.* Proposed § 226.7(f) corresponds, without substantive change, to portions of §§ 226.14(a)(2) (ii) and (iii) of the current regulation and deals with those instances in which no billing error occurred or an error occurred in a manner differing from that alleged by the consumer. Like proposed § 226.7(e), this section parallels Regulation E.

(g) *Special investigation rules.* Section 226.7(g) of the proposal corresponds, without substantive change, to portions of current § 226.14(a)(2)(iii) regarding investigating notices of billing errors that involve nondelivery of property or services or that allege that the person honoring a credit card account made an incorrect report to the card issuer.

(h) *Creditor's rights and duties after resolution.* Proposed § 226.7(h) details the creditor's duties after resolution where the creditor determines that the consumer still owes all or part of the disputed amount. Paragraph (h)(1) corresponds without substantive change to the provisions of § 226.14(b)(3). The proposal provides that the creditor shall promptly notify the consumer in writing of what the consumer owes and when it is due. The Board contemplates that this notice can be combined with the explanations required by § 226.7(e) and § 226.7(f).

Proposed paragraph (h)(2) corresponds to the current § 226.14(e)(1). This paragraph provides that the creditor may report the disputed amount as delinquent provided that the amount remains unpaid after the creditor has complied with all other requirements of the section and then allowed the greater of ten days or any free-ride period normally allowed for the consumer to pay.

Proposed § 226.7(h)(3) corresponds without substantive change to § 226.14(e)(2) and incorporates footnote 20 of the existing regulation.

(i) *Withdrawal of billing error notice.* Proposed § 226.7(i) corresponds to the introductory language in current § 226.14(a). Under this paragraph the creditor is relieved of its error resolution responsibilities if the consumer subsequently agrees that no error occurred.

(j) *Reassertion of error.* Proposed § 226.7(j) corresponds to the last paragraph of the current § 226.14(a). It conforms with Regulation E in that the proposal permits the consumer to assert billing errors of the type described in §§ 226.7(a)(1) through (a)(6) when they were discerned from documentation requested under § 226.7(a)(7).

(k) *Forfeiture penalty.* Section 226.7(k) of the proposal corresponds to § 226.14(f) of the current regulation. The provision is unchanged, except for the addition of clarifying language regarding the provision's applicability when a consumer has paid rather than withheld the amount in dispute pending resolution.

(l) *Exceptions to the general rule.* Proposed § 226. 7(l) corresponds without substantive change to § 226.14(g) of the present regulation.

(m) *Relation to Electronic Fund Transfer regulations.* Section 226.7(m) is a new provision designed to alleviate confusion concerning whether to use Regulation Z or Regulation E error resolution procedures. Under proposed paragraph (m), if a consumer and a financial institution have an agreement to extend credit when the consumer's account is overdrawn or has dropped below a specified minimum balance, and there is an error as to the extension of credit, the creditor is instructed to follow certain error resolution provisions in Regulation E.

Section 226.8—Determination of Annual Percentage Rate

(a) *General rule.* Proposed § 226.8 is substantially similar in content to the present § 226.5(a) of the regulation, but has been restructured in an effort to provide greater clarity regarding its requirements. Paragraph (a) incorporates the general standard of accuracy of ⅛ of 1% above or below the exact annual percentage rate, in line with a recent Board amendment.

As noted below in the discussion of proposed § 226.12 regarding annual percentage rate calculations for closed-end credit transactions, in light of amended § 130 of the act which provides a defense to civil liability where errors result from the good faith use of calculation tools, the Board proposes to eliminate, as no longer needed, § 226.5(c) regarding the protection afforded creditors for use of faulty calculation tools.

(b) *Annual percentage rate for initial disclosures and for advertising purposes.* Under § 226.8(b) of the proposal, the annual percentage rate for advertising disclosures under proposed § 226.10 and initial open-end credit disclosures under proposed § 226.5(b) would be determined by multiplying each periodic rate by the number of periods in a year. This reflects the current requirements of the regulation.

(c) *Annual percentage rate for periodic statements.* Section 226.8(c) of the proposal provides rules for determining the annual percentage rate to be disclosed on periodic statements under the new § 226.5(c). This paragraph reflects the current § 226.5(a)(1) through (3). Paragraph (a)(1) addresses corresponding annual percentage rates required by new § 226.5(c)(4), while paragraph (a)(2) sets forth the methods for determining the annual percentage rate to be disclosed under new § 226.5(c)(8).

Section 226.8(c)(2)(i) permits creditors with no finance charge other than one calculated solely on the basis of a periodic rate(s) either to use the quotient method or to multiply the periodic rate(s) by the number of periods in the year. Proposed paragraph (c)(2)(ii) restates the substance of 226.5(a)(2) of the current regulation, explicitly incorporating the limitations formerly set forth in § 226.5(c)(2)(iv). The final sentence of this paragraph reflects the substance of Board Interpretation § 226.501. It should be noted that this paragraph represents an exception to the general requirement in § 107(c) of the act that the annual percentage rate in open-end credit be calculated according to the quotient method, as reflected in § 226.8(c)(3). The Board is not aware of any widespread use of this exception, which permits a degree of understatement of the annual percentage rate beyond the general accuracy limits of the regulation. In view of the apparent lack of use of this provision and its potentially distorting effect on the resulting annual percentage rate, the Board specifically requests comment on whether this provision might be eliminated entirely.

Proposed § 226.8(c)(2)(iii) corresponds to the present § 226.5(a)(3). As a general rule, where the finance charge imposed during the billing cycle includes or consists solely of a charge other than an amount applicable to a periodic rate, the creditor must use the so-called quotient method in determining the annual percentage rate. Under this method, the total finance charge for the billing cycle is calculated by dividing the finance charge by the total balances and multiplying the result by the number of periods in the year. This approach is reflected in paragraph (c)(2)(iii)(A). Paragraph (c)(2)(iii)(B) requires creditors to use a variation of the quotient method in billing cycles where the finance charge includes transaction charges. This method is similar to the quotient method set out in the paragraph above, except with regard to the determination of the denominator, consisting of the balances and other amounts on which a finance charge was imposed. Appendix B contains an expanded version of present footnote 5a, which provides examples for determining the total amount to be used as the denominator for these calculations. A further example has been added to this material to reflect a situation in which no previous balance exists and a transaction occurs sometime after the opening date of the billing cycle. The example makes it clear that the denominator in such a situation cannot be less than the amount of the transaction. The Board specifically requests comment on the need for this example, together with alternative methods of calculating the annual percentage rate in these situations.

Under § 226.8(c)(2)(iii)(A), the quotient method requires that there be an outstanding balance in the account for that billing cycle, in order to determine the denominator to be used in applying the method. Where there is no outstanding balance, but a finance charge was imposed during that billing cycle, the resulting annual percentage rate will be undefined, using the quotient method. Footnote 51 to this paragraph requires creditors under these circumstances to make special disclosures pursuant to § 226.5(c)(8), rather than attempting to compute and disclose a meaningless annual percentage rate. The Board solicits comment on whether a provision should also be added either exempting a creditor from computing and disclosing an annual percentage rate or, in the alternative, establishing additional formulas for such computation, for billing cycles in which there is an outstanding balance on the account, but it bears no relationship to the finance charge imposed during that billing cycle. For example, some plans may require an initial loan fee, which is a finance charge but is not related to the balance on the account for that month. Using the quotient method, a numerical annual percentage rate could be derived, but might not accurately reflect the cost of credit on an annualized basis.

Section 226.8(c)(2)(iii)(C) reflects the current § 226.5(a)(3)(iii) and permits creditors whose total finance charge for a monthly billing cycle does not exceed 50 cents to multiply each periodic rate by the number of periods in determining the annual percentage rate, rather than performing the more complex calculations required by the quotient method. However, as in paragraph (c)(2)(iii), where there is no balance on the account for that cycle, the creditor cannot determine an annual percentage rate and must instead make the special disclosures required by § 226.5(c)(8).

(d) *Calculations where daily periodic rate applied.* Proposed § 226.8(d) corresponds to the first two paragraphs of Board Interpretation § 226.506. As under the current regulation, it is available to creditors whose finance charge either consists solely of a periodic rate or includes other charges not associated with a specific transaction.

Section 226.9—Right of Rescission

(a) *Consumer's right to rescind.* Proposed §§ 226.9 implements §§ 125(a) and (e)(4) of the amended act, and applies to consumers' rescission rights when an open-end credit plan is secured by the consumer's principal dwelling.

Generally, rescission rights arise with each transaction made on an open-end account as provided by § 226.9(a)(1)(i) of the proposal. The amended act provides, however, that a creditor need not provide the right to rescind at the time of each transaction; instead, the consumer's rescission rights need arise only at certain limited times. Those times are the opening of the plan and the creditor's increasing the credit limit.

Section 226.9(a)(1)(ii) of the regulation provides accordingly and also provides the consumer with the right to rescind when a security interest in the consumer's home is taken to secure a preexisting open-end credit plan. The Board requests comment on whether the Board should, by regulation, require that the right to rescind be provided at any other time during the existence of an open-end plan (for example, when a term originally disclosed as an initial disclosure is changed).

Proposed footnote 54 implements § 125(e)(4) of the act and provides that the special provisions regarding limiting the consumer's rescission rights to certain events will expire three years after the effective date of the Truth in Lending Simplification and Reform Act.

As is presently required, the rescission right will expire three days after the event giving rise to rescission or after receiving a copy of all material disclosures together with the notice of the right to rescind, whichever is later. Footnote 55 to § 226.9(a) identifies which disclosures are considered "material" disclosures (i.e., certain initial disclosures). If the material disclosures and rescission notice are not properly provided, then the customer's right to rescind shall expire upon the earlier of three years after the event giving rise to the rescission right or the date of the transfer of the principal dwelling. Additionally, as the amended § 125(f) of the act indicates, the right to rescind will expire, if an administrative proceeding is instituted, one year following final administrative action or judicial review of that proceeding. In some cases, therefore, the right to rescind will extend beyond the three-year period.

(b) *Notice of the right to rescind.* Section 226.9(b) of the proposal corresponds to § 226.9(b) of the present regulation. It no longer requires specific language or type size for the rescission notice. The proposal replaces the mandatory text of the rescission notice with only four stated disclosures that must be included in a creditor's rescission notice. Furthermore, the creditor is no longer required to give the consumer two copies of the notice. Model forms, for use in the most common situations in which rescission will arise, are provided in Appendix A to the regulation.

(c) *Delay of creditor's performance.* Section 226.9(c) of the proposal, which has been rewritten more concisely, substantially restates the present § 226.9(c). The exemption for agricultural credit has been deleted since agricultural credit is no longer subject to Truth in Lending.

(d) *Effects of rescission.* Proposed § 226.9(d) deals with the effects of rescission and restates present § 226.9(d) with only minor change. The 10-day time period in the present regulation, within which the creditor must return any money or property should the consumer rescind, has been increased to 20 days in order to implement the change in § 125(b) of the amended act.

(e) *Consumer's waiver of right to rescind.* Section 226.9(e) of the proposal deals with the consumer's waiving the right to rescind. It restates with little change the present § 226.9(e). It eliminates as unnecessary the language that the emergency be "bona fide", "immediate" and "personal"; it is believed that the general requirement of a "financial emergency" appears to cover the targeted situations. The provision also makes clear that a waiver must be signed by all persons entitled to rescind.

(f) *Exemptions.* Proposed § 226.9(f) corresponds to § 226.9(g) of the present regulation. Proposed § 226.9(f)(1) restates the present §§ 226.9(g) (1) and (2); proposed § 226.9(f)(2) restates the present § 226.9(g)(5); and § 226.9(f)(3) restates the present § 226.9(g)(3), without substantive change. Present § 226.9(g)(4) regarding agricultural credit is no longer needed.

Section 226.10—Advertising.

This section corresponds to those provisions of § 226.10 of the present regulation that govern the advertising of open-end credit.

(a) *Generally available terms; accuracy of advertising.* The proposal's § 226.10(a) corresponds to § 226.10(a)(1) of the current regulation, and unlike the present regulation which relates only to accuracy in stating the amount of credit, installment amount, and downpayment, implements a general standard that an advertisement for open-end credit should accurately reflect actual terms that the creditor is prepared to offer. It is the Board's belief that the proposed version better implements statutory intent by requiring accuracy in stating credit terms generally and by prohibiting any inaccurate or misleading information.

(b) *Advertisement of terms that require additional disclosures.* Section 226.10(b) corresponds to § 226.10(c) of the current regulation. The proposal, while not intending any substantive change, clearly indicates that for open-end credit the list of terms that trigger additional disclosures corresponds to those required by § 226.5(b). The list, however, no longer includes the Comparative Index of Credit Cost, which has been deleted from the amended act.

The additional information required to be set forth in an advertisement when one of the § 226.5(b) terms is present has been shortened. In conformity with amendments to the act, the proposal requires only (1) that any minimum, fixed, transaction or activity charges involved be stated and (2) that the corresponding annual percentage rates be set forth. This recognizes, for example, that disclosing in an advertisement the method of determining the balance upon which a finance charge will be imposed (one of the deleted items) is lengthy and complex. Since the amended act gives the Board the authority to add to the statutory list of terms required to be disclosed, however, comment is solicited on whether other terms should be added to those required by the proposal.

(c) *Catalogs and multiple-page advertisements.* Section § 226.10(c) corresponds to § 226.10(b) of the current regulation. Little change, other than style and format, has been. The proposed version incorporates the substance of Board Interpretation § 226.1002, which allows the use of representative amounts.

(d) *Use of annual percentage rate in oral disclosures.* Section 226.10(d) is new, and corresponds to a completely revised § 146 of the act. The original § 146, now repealed, required inclusion of certain language in advertisements for credit repayable in more than four installments but not subject to a finance charge. (The corresponding regulatory provision, § 226.10(f), has also been dropped.) The new § 146 requires generally that, in responding orally to an inquiry about the cost of credit, the creditor state a rate only in terms of an annual percentage rate. Section 226.10(d) applies this rule to open-end credit. Section 226.10(d) of the proposal, in accordance with the act's provisions, also permits periodic rates to be stated as additional information.

Subpart C—Closed-End Credit

Section 226.11—Disclosures

This section is the heart of Subpart C, as it contains the basic rules on closed-end credit disclosure: who must disclose what to whom, and when and how. It also contains various qualifying rules for special circumstances. The content of this section has been drawn generally from §§ 226.6 and 226.8 of the present regulation, but it also reflects matters now found in § 226.4 and in many Board interpretations. Some parts of it are new. There are some Board interpretations that have not geen incorporated into the regulation and comment would be welcome about whether that should be done.

Appendix A contains model forms and clauses that may be used to make the disclosures required by this section. Comment is welcomed on any aspect of these forms and clauses, including design, content, and usefulness.

(a) *Who must make disclosures to whom.* Although there will be very few transactions with more than one creditor (since "creditor" is defined in new § 226.2(q) as the person to whom an obligation is payable on its face), paragraph (a)(1) provides that if there are multiple creditors, only one of them must make disclosures. The object is to ensure that the consumer receives a single complete set of disclosures concerning the transaction; any of the multiple creditors may provide that set. This is different from the rule in present

§ 226.8(d) which places disclosure responsibilities on all of the multiple creditors. Those items unique to credit sales must be provided whenever one of the creditors is a seller, whether that creditor or another actually makes the disclosures.

Paragraph (a)(2) provides that where there are several consumers in a transaction, the creditor must provide disclosures to only one of them, provided that person is one primarily liable on the obligation. In rescindable transactions, however, disclosures must be made to each person entitled to rescind.

(b) *What disclosures must be made.* Paragraph (b)(1) provides that a creditor initially has a choice of which type of disclosures to make, that is, transactional disclosures or alternate shopping disclosures. Transactional disclosures are the type that have traditionally been provided under Regulation Z. They reflect the specific terms of a particular obligation and they usually are provided very close to the time a transaction is consummated. Alternate shopping disclosures are new. They are not tailored to individual obligations, but rather are based on representative amounts and terms the creditor usually offers. Since they are more general in nature, they can be prepared in advance, made available to the public, and provided to consumers much earlier than is possible with transactional disclosures. Thus, the shopping disclosures should facilitate comparisons among credit sources by putting information into the hands of consumers at a time when credit shopping is most likely to occur. These two types of disclosures are more fully described in paragraphs (f) and (h).

Paragraph (b)(2) is a reminder that where transactional or alternate shopping disclosures are later rendered inaccurate, the creditor may be required to redisclose. The rules governing redisclosure are more fully described in paragraph (e), Effect of subsequent events.

(c) *Timing and form of disclosures.* Paragraph (c)(1) states the timing rules for transactional disclosures. In most cases, they must be made before consummation of the transaction (see the definition of "consummation" in new § 226.2(n)). In some residential mortgage transactions, however, the disclosures must be given earlier than that and in some transactions involving mail or telephone orders and series of sales, the disclosures may be delayed. These special timing rules are found in other paragraphs in this section.

Paragraph (c)(2) states the timing rules for alternate shopping disclosures. They must be given at the time of application or as soon thereafter as possible. It is also permissible for these disclosures to be given before a formal application is made. In no case may they be given later than consummation.

Paragraph (c)(3) sets forth the format rules that are designed to highlight the Truth in Lending disclosures and ensure that the consumer's attention is drawn to them. In particular, it provides for segregation of the disclosures from other matters. The disclosures may appear on their own document or they may be included in another document (such as the contract). In the latter case, however, they must be separated from other items. This could be done, for example, by placing the disclosures in a boxed section of the form, by separating them from the contract provisions with bold print dividing lines, or a similar technique.

The disclosures must be presented together and they must begin on the front of the document on which they appear. There is no limitation on the number of pages that may be used for disclosures; therefore, as long as they begin on the front of the document, they may continue on the reverse side or on following pages.

There are two exceptions to the rule that all Truth in Lending disclosures must appear together. First, the creditor's identity need not be located with the segregated disclosures. Thus, for example, a company name and symbol may appear at the top of a form, while the other Regulation Z disclosures appear further down the page.

The second exception concerns the itemization of the "amount financed." If the customer chooses to have the components of this figure itemized (as provided in new §§ 226.11(f)(2) and 226.11(h)(2)(ii)), the itemization may not appear with the other Truth in Lending disclosures.

The provision regarding additional information is stricter than that in the present regulation. The section of the form containing the Truth in Lending disclosures may not include any material that does not directly relate to the disclosures. For example, a creditor may include with the disclosures an explanation of why certain items are disclosed as estimates, but may not include information on warranties. Although the regulation does not require the customer to acknowledge receipt of the disclosure statement, the final sentence of paragraph (c)(3) permits inclusion of an acknowledgment of receipt with the disclosures.

Paragraph (c)(4) states that the words "annual percentage rate" and "finance charge" must be presented more conspicuously than other required disclosures. This may be done through use of bolder print, contrasting color, underscoring, asterisks, and so forth. An exception to this rule is made for the creditor's identity so that it may be more prominently displayed.

It should be noted that several requirements in the present regulation relating to the format of disclosures have been eliminated. Two of these are the requirement that numerical amounts be expressed as numerals and the specifying of a minimum size of type for numerals. The Board believes that such technical matters can be adequately policed under the general "clear and conspicuous" requirement in paragraph (c)(3).

Another deletion is the requirement in present § 226.8(a) that all disclosures in combined contract-disclosure documents be above the customer's signature. Since that provision was originally intended to draw the customer's attention to the disclosures when they are combined with other matters, it appears unnecessary in light of the proposed requirement that all disclosures be grouped and segregated on combined documents.

(d) *Basis of disclosures and use of estimates.* This paragraph is intended to provide guidance in disclosing information that may be subject to uncertainty or to minor irregularities over the life of the transaction.

Paragraph (d)(1) first states the general rule that the creditor should make its disclosures on the basis of the best information it knows at the time disclosures are made. Furthermore, the creditor should assume that the terms of the agreement will be complied with, for example, that payments will be made on time.

The first paragraph also provides that the disclosures should be based on the repayment arrangement agreed upon by the parties, even if that arrangement differs from the one provided for in the contract. For instance, if an employee/borrower signs a note reflecting one rate of finance charge but the parties agree that a lower rate will be charged as long as the borrower continues in the creditor's employ, the disclosures should be based on the lower rate (and should include disclosure of the variable rate feature).

One exception is made to this rule that disclosures should be based on the actual agreement, and it concerns a common situation for credit unions and for creditors extending credit to their employees. The contract document may provide, for example, for monthly payments, but the creditor and the consumer may agree that payments will be made on another basis, such as biweekly payroll deductions. Disclosures may be made on the basis of a monthly repayment schedule in this instance, provided the consumer is free to terminate the payroll deduction without penalty of any kind. The Board solicits comment on whether this special rule is appropriate, and whether it should be applied to any other situations.

Paragraph (d)(2) provides that disclosures may be estimated if the exact information is unknown at the time disclosures are made. This provision is more liberal than its counterpart in present § 226.6(f), which provides that estimates may be used only where disclosures are given at the latest possible time. The change has been made in order not to discourage creditors from providing disclosures earlier. As before, of course, the creditor is required to use the best available information, and the estimated disclosures must be designated as such.

Paragraph (d)(3) allows certain very minor variations in payment amounts and timing to be disregarded. Since payments cannot be collected in fractional cents, it is often difficult to exactly amortize an obligation with equal payments; the amount of the last payment must often be adjusted slightly to account for the rounding of the other payments to whole cents. Paragraph (d)(3)(i) permits the effects of this practice to be disregarded. Similarly, the following three provisions permit creditors to disregard the fact that dates for payments and advances must occasionally be changed on account of weekends and holidays, the fact that months differ in length, and the fact that leap years contain an extra day.

Paragraph (d)(4) also permits certain common variations in the payment schedule to be disregarded for purposes of computations and disclosures. It contains the so-called "minor irregularities" provisions from present § 226.8(s). Where the final payment in a transaction differs from the others because of an irregular first period (i.e., one that is shorter or longer than the regular period by the number of days specified), the variations may be ignored, for example, in disclosing the payment schedule and the finance charge.

The length of the irregular first period that may be treated as regular varies, depending on the term of the obligation; thus, in shorter term transactions, the degree of variation from a regular period is smaller, while in longer transactions, the variation can be much larger. Note that the degree of variation in the first period is identical to the "minor irregularities" provision for computation of the annual percentage rate found in new § 226.12(e). Note also that additional guidance has been provided on how to determine the length of the periods in order to measure the irregularity. A regular period is the most common payment interval in the transaction. In measuring the length of that period, the creditor looks to the next regular period following the irregularity and, as a general rule, measures it based on the actual number of days. In transactions involving payment intervals of a month, semi-month, or multiple of a month, however, the creditor has the choice between using the actual number of days and an assumed 30-day month.

Paragraph (d)(5) continues the policy in present § 226.4(g) that disclosures for demand obligations should assume a certain maturity. However, the Board believes that an assumed maturity of one year is a simpler standard to use for computations rather than the one-half year in the current regulation. As in the present provision, if the demand instrument contains an alternative maturity date, disclosures shall be based on that date. Also, if a consumer executes a demand note but has an agreement with the creditor that payments of interest or principal or both will be made in certain installments, the disclosures must be based on that repayment schedule. This rule is essentially a specific application of the more general rule stated in the last sentence of paragraph (d)(1).

This subparagraph makes two other changes in the treatment of demand loans. First, the creditor must state that disclosures are made on an assumed one year maturity. Second, all of the usual disclosures must be given; that is, the exemptions now provided in Board Interpretation § 226.815 have been eliminated.

Paragraph (d)(6) prohibits splitting up a single obligation for purposes of disclosure, as well as combining what are actually two or more obligations. The second sentence addresses a common situation in which the downpayment in a credit sale of goods or services is itself financed. It provides that in such cases, the two credit obligations arising from a single sale may be disclosed as two transactions, incorporating a position taken in Official Staff Interpretation FC-0161.

(e) *Effect of subsequent events.* This paragraph explains what happens when, after disclosures have been made, something happens that makes those disclosures inaccurate. Examples of such "subsequent events" are a delay in the date of disbursement of funds, a change in the finance charge to be imposed, and a change in the creditor's policy concerning late payment charges.

Paragraph (e)(1) restates the rule found in present § 226.6(g) that the regulation is not violated merely because a subsequent event renders inaccurate the disclosures already given. This provision does not, however, answer the question of whether new disclosures must be provided to reflect the effect of the subsequent event; that question is addressed by the following three subparagraphs for three different situations.

Paragraph (e)(2) explains what must be done if the change occurs before consummation of the transaction and the disclosures already given are transactional (rather than the alternate shopping disclosures). In such cases, the creditor must disclose the changed term prior to consummation. In general, it is not necessary to provide an entire set of diclosures, although creditors may do so if they prefer. The exception to this general rule that only the changed term must be redisclosed concerns certain residential mortgage transactions. As more fully explained in paragraph (g), an entire new set of disclosures is sometimes required.

Paragraph (e)(3) also addresses changes occurring before consummation, but it applies where the disclosures already given are the alternate shopping disclosures. In such cases, new transactional disclosures may be required prior to consummation, and the explanation of when that must be done is described in more detail in paragraph (h).

Paragraph (e)(4) concerns an event that occurs after consummation. Once the transaction has begun, the question of whether new disclosures must be given revolves around whether the change constitutes a refinancing. Paragraph (i) on refinancings addresses this in greater detail.

Note also that if the subsequent event is the fact that another person is to take over the consumer's obligation, it may require new disclosures to be given to the new party; see paragraph (j) on assumption.

(f) *Transactional disclosures.* This paragraph consolidates what is contained in current § 226.8(b), (c), (d), and (e). It reduces the number and complexity of the current disclosures and combines into a single list disclosures for credit sales and for nonsale credit. Certain disclosures, such as unpaid balance of cash price, unpaid balance, and required deposit balance, have been eliminated. In addition, the required terminology has been eliminated for other items, including balloon payment, cash downpayment, trade-in, and prepaid finance charge.

Required terminology is retained, however, for "amount financed," "finance charge," "annual percentage rate," "total of payments," and "total sale price" (the last of these being the new term for what was formerly called "deferred payment price"). The required terminology must be explained to the consumer in simple language. The descriptive phrases for annual percentage rate and finance charge are prescribed by the regulation. Descriptors for the other three disclosures are provided in the proposal as a model, although that exact language need not be used.

Disclosures need be made only to the extent applicable and footnote 56 calls attention to the fact that there are a number of special exceptions found in paragraph (f)(17). Finally, a creditor may choose to make either the transactional disclosures required by this paragraph or the alternate shopping disclosures found in paragraph (h).

Paragraph (f)(1) requires that the creditor making the disclosures be identified. The purpose of this disclosure is to give the consumer the name of a person to whom inquiries and complaints can be directed.

Paragraph (f)(2) requires disclosure of the "amount financed," using that term, and a descriptive explanation. The computations used to figure the "amount financed" are the same as those currently required, but the itemized computations no longer have to be shown in all cases. The "principal amount of the loan" is a new phrase that essentially corresponds to the term "amount of credit" found in present § 226.8(d)(1). The phrase "cash price less downpayment (which includes any trade-in)" corresponds to the "unpaid balance of cash price" in present § 226.8(c)(3). Paragraph (f)(2)(i)(C) refers to prepaid finance charges, which are defined essentially the same as in present § 226.8(e)(1).

In addition to showing the amount financed, the creditor must state that the consumer is entitled to receive a written itemization of that figure and provide a way for the consumer to indicate a desire for such an itemization by initialing "yes" or "no." If the consumer requests an itemization, it must be given at the time the other required transactional disclosures are given or as soon as possible thereafter. This timing rule is a slight relaxation of the statutory provision. It reflects the fact that it may be difficult or impossible to provide the itemization simultaneously with the other disclosures; the Board believes, however, that every effort must be made to provide the itemization promptly.

Paragraph (f)(2)(ii)(B) lists the items that must be disclosed when the consumer requests this itemization. This paragraph implements amended § 128(a)(2) of the act with very few changes. The Board solicits comment on this treatment.

Under paragraph (f)(3), creditors must disclose the total finance charge and the specified description, using the required terminology. The major change from the current regulation is that the finance charge no longer needs to be itemized. Another change is that the finance charge must be disclosed in all transactions, including real estate transactions, in accordance with the recent statutory amendments.

Paragraph (f)(4) requires disclosure of the annual percentage rate and the specified parenthetical explanation, using the required terminology. The de minimis exception found in the current § 226.8(b)(2) has been retained but is now found in paragraph (f)(17)(ii) of the proposal.

Paragraph (f)(5) requires additional disclosures if the annual percentage rate is subject to increase. These disclosures are similar to those in current § 226.8(b)(8). However, the disclosures in the proposal are steamlined and clarified. In particular, the hypothetical examples showing the effects of an immediate rate increase of ¼ percent have been eliminated. These hypothetical examples have caused considerable difficulty for creditors and the Board questions their usefulness for consumers since the amount and timing of the assumed rate increase generally bears little resemblance to the rate changes likely under a variable rate contract. Comment on this matter would be appreciated.

Section 226.11(f)(6) calls for disclosure of the payment schedule. It calls for disclosure of the "timing" of payments; rather than the "due dates or periods" as in present §§ 226.8(b)(3), but it has the same meaning. Although the amount of any large payment must be shown, it need not be labeled as a balloon payment, as is now the case under present § 226.8(b)(3). Similarly, the requirement of stating the conditions under which that payment would be refinanced if not paid when due has been deleted.

Footnote 59 permits a simplified payment schedule disclosure when the amount of any payment in a series is not more than 5 percent larger than the smallest payment in that series. In such cases, the payments may be disclosed as if they were uniform, at the highest level. This will simplify disclosure of the payment schedule when the variation in payment amounts is relatively small, for example, in mortgage transactions where the principal and interest portion of the payment is uniform, but the portion attributable to mortgage insurance differs slightly from year to year. Note, however, that the actual amounts of payments would have to be accounted for in calculating and disclosing the finance charge and the annual percentage rate, even if this provision is used to simplify the payment schedule disclosure.

"Series" of payments as used here means consecutive payments in a stream of payments. Therefore, for example, in a graduated payment mortgage where payments rise sharply for 5 years and then decline gradually over the next 25 years as the mortgage insurance premium decreases, the 25 years of payments would be considered a series; if the "5 percent test" is met, those 300 payments could be disclosed as if they were equal in amount.

In applying the "5 percent test," an irregular first payment resulting from an odd first period may be disregarded; however, the amount of such a payment would have to be separately disclosed.

Transactions of the type covered by present Board Interpretation § 226.808, as well as mortgages involving mortgage insurance premiums calculated on a declining unpaid balance, may be able to take advantage of this "5 percent test." Transactions like the one described in Official Staff Interpretation FC-0157, which involve premiums for credit life and disability insurance that are computed on the outstanding principal balance, may also take advantage of it. The Board solicits comment on the usefulness of this rule and whether it should be modified in any way.

Section 226.11(f)(7) requires disclosure of the total of payments, using that term, including a descriptive explanation. The descriptor in the proposal is not required, but may be used as a guideline. Footnote 60 provides that if footnote 59 is used in disclosing the payment schedule, the total of payments should be consistent with the payment amounts disclosed and should be labeled as an estimate. The total of payments must be disclosed in all transactions, including purchase money mortgages, because of the elimination of the exemption in the statute.

Section 226.11(f)(8) provides for disclosure of the fact that an obligation is payable on demand. If the disclosures are based on an assumed maturity of one year as provided in § 226.11(d)(5), that fact must also be stated. Both of these are new disclosures that have been added in the proposal in order to provide more complete information. Comment is solicited on this provision.

Disclosure of the total sale price in credit sales, using that term, along with a descriptive explanation, is mandated by § 226.11(f)(9). As § 128(a)(8) of the amended act specifically requires, the description must include reference to the amount of the downpayment. The total sale price is the sum of the cash price, other charges, and the finance charge, and it corresponds to the "deferred payment price" in § 226.8(c)(8)(ii) of the present regulation.

Section 226.11(f)(10), dealing with the effect of prepayment, is virtually identical to amended § 128(a)(11) of the act. It distinguishes between obligations with precomputed finance charges, and so-called simple interest obligations, but also recognizes that some obligations include both types of finance charge. Where there is a precomputed finance charge, the creditor must disclose whether or not the consumer will receive a rebate of any finance charge upon prepayment. The method of rebate need not be named. The distinction between "earned" and "unearned" finance charge in present § 226.8(b)(7) has been deleted. This provision applies to both voluntary and involuntary repayment; therefore if there is a rebate upon voluntary prepayment but none for prepayment upon acceleration, that would have to be disclosed. If there is a penalty in simple interest obligations, only that fact need be disclosed. If there is no penalty, no disclosure need be made.

The proposal eliminates the requirement in the present regulation that an explanation be given of how rebates or penalties would be computed. These matters are generally explained in greater detail in the contract, and the Truth in Lending disclosures will now contain a cross reference to the appropriate contract document for further information about these matters. (See paragraph (f)(15) below.)

As mentioned above, some transactions involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance. In these cases, § 226.11(f)(10)(iii) requires disclosures about both prepayment rebates and penalties. Examples of this type of transaction include simple interest student loans with loan guarantee insurance and mortgages with mortgage guarantee insurance. If the insurance premiums are precomputed finance charges, disclosure about rebate of finance charges would be required with regard to that portion of the obligation. In addition, disclosure of a prepayment penalty would be required if one may be imposed.

Section 226.11(f)(11) implements amended § 128(a)(10) of the act. This provision requires disclosure only of charges imposed on account of late payments before maturity, that is, charges added to individual delinquent installments by a creditor who otherwise considers the transaction ongoing on its original terms. Therefore, this proposal does not require disclosure of the right of acceleration or of charges involved in collecting a defaulted obligation. The Board believes that in a simple interest obligation, the continued accrual of a finance charge need not be disclosed as a late charge, unless a higher rate of interest is imposed once a payment is overdue. This accords with the position taken by the Board staff in Official Staff Interpretation FC-0083. Deferral and extension charges are not covered by this provision.

Section 226.11(f)(12) is proposed in virtually the same form as it appears in § 128(a)(9) of the amended act and concerns disclosure of security interests. The type of security interest no longer needs to be disclosed, only the fact that there is a security interest. Again it should be noted that under paragraph (f)(15), the consumer will be reminded to consult the other documents in the transaction for additional information about the security interest.

The property covered by the security interest must be identified. If the collateral is the item purchased as part of the credit transaction, it may be identified in a general fashion. (Note that this streamlined approach is available only in credit sale transactions since there is no purchase if it is non-sale credit.) Other collateral must be more specifically identified by item or type, although the description may be brief, e.g., "1980 Ford Torino" or "household goods." If after-acquired property will be covered by the security interest, that must be disclosed, but the "future indebtedness" disclosure in present § 226.8(b)(3) has been eliminated.

Section 226.11(f)(13) relates to the disclosure of certain insurance premiums. If the disclosure specified in § 226.4(d) are made in order to exclude the insurance premiums from the finance charge, these disclosures must appear with the other required disclosures.

Similarly, certain charges are excludable from the finance charge if itemized under § 226.4(e). Section 226.11(f)(14) provides that this itemization also must appear with the other disclosures.

Section 226.11(f)(15) is virtually identical to amended § 128(a)(12) of the act. Since some disclosures have been eliminated and others have been abbreviated, this provision requires a cross reference to the contract documents for certain information not contained in the disclosure statement. Information about nonpayment, default, the right to accelerate the maturity of an obligation, and prepayment rebates and penalties is covered.

Section 226.11(f)(16) implements amended § 128(a)(13) of the act and adds a disclosure. For residential mortgage transactions (as defined in new § 226.2(aa)), the consumer must be told whether or not a subsequent purchaser or assignee may assume the obligation on its original terms. If a creditor requires an assignee to pay an assumption fee or similar charge, this would not mean the assumption was on terms differing from the original ones, but if the interest rate differs from that originally imposed, that would be considered to be on different terms.

Various disclosures otherwise required need not be made in certain types of transactions, and these special rules are gathered in § 226.11(f)(17). In interim student credit transactions, the finance charge, schedule of payments, total of payments, and total sale price need not be disclosed. The Board intends "interim credit extension" to mean one without a set repayment schedule. This phrase is used in place of "student loan" since some transactions are actually credit sales, for example, where a university is the creditor. Present Board Interpretation § 226.809 and staff letters have been incorporated in this subparagraph since all student credit guarantee programs are covered, whether federal, state, or private. In transactions with small finance charges, as described in paragraph (f)(17)(ii), the annual percentage rate need not be disclosed. In transactions with a single payment, the total of payments need not be disclosed. The disclosure exemptions for residential mortgage transactions in the present regulation have been eliminated. (See proposed § 226.11(g) for the special rules concerning these transactions.)

(g) *Special rule for certain residential mortgage transactions.* This paragraph implements § 128(b)(2) of the amended act, requiring early disclosure in residential mortgage transactions that are also subject to the Real Estate Settlement Procedures Act (RESPA). Just as the good faith estimates under RESPA must be made within three business days of the consumer's written application, the Truth in Lending disclosures must be given in the same time period. Transactional, rather than alternate shopping, disclosures must be given, but they may be based on good faith estimates.

As long as the annual percentage rate in the mortgage transaction actually entered into is within ⅛ percentage point of the rate disclosed on these early disclosures, the creditor will have no further obligations. If, however, the variance is greater than ⅛ percentage point in either direction, a *complete* set of transactional disclosures is required prior to consummation or settlement.

The statutory provision has been implemented virtually unchanged. The Board solicits comment on whether this matter requires further elaboration.

(h) *Alternate shopping disclosures.* The proposals in this paragraph are altogether new and represent a radical departure from past thinking about Regulation Z disclosures. In essence, it provides an alternative to the current requirement that all disclosures be based on the specific details of the actual transaction; this requirement has in practice meant that the consumer almost always receives the information at the last possible moment before consummation, when the consumer is, at least psychologically, committed to the transaction. Relying on this paragraph, creditors could prepare disclosures for representative transactions and give them to consumers upon inquiry or application, before the details of a particular loan or credit sale are negotiated. Since they would be given to the consumer early in the shopping process, these alternative disclosures may be far more likely to influence the consumer's shopping decision than the individualized disclosures currently required.

Although this approach to providing disclosures about credit terms differs from the traditional approach, the Board believes it is well within its authority under § 105 of the act to write regulations containing whatever adjustments and exceptions may be required to carry out the purposes of the law. Since this alternative scheme has the potential of greatly enhancing credit shopping, the Board considers the provision an appropriate exercise of its rule-writing responsibility. Furthermore, the Board would note that the idea of early disclosures has been supported by Senator Proxmire, the principal sponsor of the recent Truth in Lending reform amendments. See 125 Cong. Rec. S15262 (October 29, 1979.)

The shopping disclosures would have to be made at or as soon as reasonably possible after application, and copies of them would have to be available to the public generally. A creditor electing to rely on this section would compile the specified disclosures for representative amounts of credit. The creditor would determine a range of typical (albeit hypothetical) credit extensions—perhaps loans from $1,000 to $5,000, in $500 increments—and present the required disclosures in a format which would permit an applicant or prospective applicant to examine the terms of those representative transactions. Being more or less standardized transactions with standardized terms, these disclosures would provide immediate descriptive and comparative information on credit costs.

The specific items to be disclosed (listed in paragraph (h)(2)) parallel those for transactional disclosures, although there are some divergences. For example, rather than showing a figure for the "total sale price" (since that depends largely on the amount of the downpayment), the shopping disclosures would instead include a statement that the total sale price equals the total of payments plus any downpayment and trade-in. Similarly, although consumers will be told of their right to receive an itemization of the amount financed, the shopping disclosures will not provide "yes" and "no" boxes to be initialed, since they will be provided to the public like advertisements and will not be returned to the creditor.

Paragraph (h)(3) provides a check against a creditor providing shopping disclosures that bear little resemblance to the terms actually contained in consummated transactions. A creditor providing shopping disclosures under this paragraph will also have to make transactional disclosures under paragraph (f) unless several conditions are met.

The schedule of payments in the actual transaction must be essentially the same as that disclosed and the annual percentage rate and amount financed must be within a specified percentage of those disclosed—⅛ percentage point for the annual percentage rate and 10 percent for the amount financed. As an example, a creditor might provide alternate shopping disclosures describing loans for $1,000, $2,000, and $3,000, at an annual percentage rate of 17.125% and payable in 24 equal monthly installments. If the actual loan negotiated and consummated with the consumer had an amount financed of $2,200 at an annual percentage rate of 17.25%, payable in 24 equal monthly installments, the creditor would not need to make new transactional disclosures to the consumer. On the other hand, if the amount financed of the consummated transaction was $2,350, a new set of transactional disclosures for that loan would be required.

Furthermore, if credit life insurance or property insurance is written in connection with the transaction and excluded from the finance charge, the creditor must comply with the usual rules outlined in § 226.4(d). Finally, if the consumer requests in writing an itemization of the amount financed, the creditor must provide it prior to consummation.

The Board particularly solicits comment on this new approach to disclosures. Although it realizes that this provision may be feasible only for fairly standardized types of credit extensions, it welcomes views on whether the provision promotes the credit shopping function of the Truth in Lending Act, whether it provides a workable scheme, and whether there might be any special problems in proving that these disclosures were provided.

(i) *Refinancings—new disclosures.* Section 226.11(i) sets forth the conditions under which closed-end creditors must provide new disclosures when the terms of the existing credit transaction are changed. In substantially revised form, this paragraph replaces the current § 226.8(j) and incorporates several Board and staff interpretations regarding refinancings. As a general rule, when the creditor and consumer agree to change the terms of an existing transaction, that agreement is a refinancing and it requires new disclosures.

Under paragraph (i)(1), the type of agreement giving rise to new disclosures would not be limited to written agreements. The focus of the rule, in the Board's view, should be on whether the creditor and the consumer have a mutual understanding of the change, amounting to an offer and acceptance of that revision. Although a writing would simplify the determination of whether an agreement in fact exists, the Board believes that requiring a writing in order for a refinancing to exist would be unnecessarily formalistic. In the Board's view, the need for a writing might eliminate agreements where new disclosures would be equally useful to the consumer and no more difficult to prepare than disclosures reflecting a formal written agreement. The Board is aware, however, that the question of whether there is a new agreement between the parties may cause difficulty, and specifically solicits comments on whether a more precise definition of this term is possible.

The general rule in paragraph (i)(1) would apply only in those situations where the existing obligation is itself a consumer credit transaction subject to Regulation Z. A change in terms in a transaction not previously subject to the regulation would not be considered a refinancing but would instead be measured against the general standards of coverage of Regulation Z. Additionally, the terms whose revision may give rise to a refinancing include only those terms originally required to be disclosed under paragraph (f) or (h) and not to other contractual terms whose disclosure was never required. As a general rule, this provision assumes that any change in the terms originally required to be disclosed would constitute a refinancing, unless otherwise specified in the exceptions set forth in the following provisions of paragraph (i).

The new disclosures to be given in the event of a refinancing are the transactional disclosures outlined in paragraph (f). The creditor must give these individualized disclosures even if the alternate shopping disclosures under paragraph (h) were given on the original transaction. The Board believes that such a limitation is warranted, since the rationale for the shopping disclosures, from the creditor's point of view, no longer applies. In the event of a refinancing, the creditor already has the information necessary for that specific transaction and should be able to provide those disclosures without difficulty.

Paragraph (i)(2) sets out specific types of changes in terms which do not trigger the refinancing disclosures. Paragraphs (3) and (4) of the section provide further conditions regarding several of the exceptions noted in paragraph (2). Each of these exceptions represents a change in terms which, in the Board's view, need not be accompanied by new disclosures. For the most part, they represent changes for which new disclosures are unlikely to be of significant value to the consumer, in which the change in terms is favorable to the consumer, or in which the change in terms is unikely to provide the consumer with a realistic opportunity for comparison shopping.

Paragraph (i)(2)(i) restates existing Board Interpretation § 226.817 and further allows a change in the payment schedule resulting from the reduction in the annual percentage rate to be excepted from being a refinancing.

Under paragraph (i)(2)(ii), deferral of a single payment or a portion of that payment would not constitute a refinancing. This replaces and substantially revises the present § 226.8(1). This exception applies to the deferral of a portion of a payment as well as a full payment. This exception would not apply, however, where the creditor charges a fee for the deferral. Where the creditor defers a series of payments, one at a time, merely to take advantage of this exception and not give disclosures, the general provision in § 226.1(e) regarding circumvention or evasion may be applicable. While circumstances may validly lead to a series of deferrals of more than one payment, the Board believes that a single agreement by which more than one payment is deferred or extended would not come within this exception but would instead be considered a refinancing.

Paragraph (i)(2)(iii) states that substitution or addition of collateral, changes in late payment charges or changes in prepayment provisions need not be treated as refinancings. However, a change in collateral involving a security interest in the consumer's principal dwelling may give rise to the right of rescission. (See footnote 67 to new § 226.13(a).) Under paragraph (i)(2)(iv), an agreement approved by a court, such as a formal workout agreement, would not require refinancing disclosures. This paragraph would also exempt from disclosure requirements reaffirmations of debts discharged in bankruptcy, where approved by a court.

The exceptions from refinancing mentioned in paragraphs (i)(2)(v) and (vi) are discussed more fully in paragraphs (i)(3) and (4), respectively. The last subsection in paragraph (2) exempts from refinancing disclosures workout agreements that result from the consumer's default or delinquency and involve a change in the payment schedule. This exception would not apply, however, if the annual percentage rate is increased on the transaction or if additional credit is advanced beyond the amount already accrued plus continuing insurance premiums. The Board specifically solicits comment on whether this exception should be extended to workout agreements made in anticipation of the consumer's default or delinquency.

Paragraph (i)(3) incorporates present Board Interpretation § 226.811. Under this provision, no additional disclosures are required for renewal of single payment obligations so long as the appropriate disclosures have already been made, the new amount financed and payment term are essentially unchanged, and the annual percentage rate previously disclosed is not increased.

Paragraph (i)(4) makes further disclosures unnecessary in three situations where the amount of credit is increased. Under paragraph (i)(4)(i), the increase results from the creditor reimbursing itself for expenses incurred in performing the consumer's duties with regard to the transaction. Paragraph (i)(4)(ii) exempts from refinancing disclosures the addition of subsequent purchases to an outstanding balance under a series of sales agreement which complies with proposed § 226.11(1).

Paragraph (i)(4)(iii) reflects the provisions of current Board Interpretation § 226.814. Optional insurance purchased by the consumer after consummation of the underlying credit transaction and added to the balance on that transaction would require no new disclosures on the underlying credit extension. However, as under the present interpretation, separate disclosures must be provided for the insurance transaction itself.

(j) *Assumptions—new disclosures.* Under paragraph (j), a creditor must make disclosures to a new consumer whom the creditor agrees to accept as an obligor on an existing transaction. In substantially revised form, this paragraph is based on present § 226.8(k) and Board Interpretation § 226.807. As in the refinancing provision, the new disclosures required must be transactional disclosures. Unlike the current regulation, the agreement by which the subsequent consumer is accepted need not be in writing. At this time, the Board does not believe that the existence of a writing is necessary to the finding of an agreement between the parties. However, the Board understands that difficulties may arise with regard to determining the existence of an agreement, and specifically requests comment on this issue.

(k) Mail or telephone orders—delay in disclosures. Paragraph (k) consolidates mail order and telephone credit sales and loans into one set of disclosures. This paragraph implements amended § 128(c) of the act and is essentially a restatement of current § 226.8(g) and Board Interpretation § 226.802, with the addition of "total sale price" as a required disclosure. If the procedure outlined in this paragraph is not followed, the transactional disclosures found in paragraph (f) would have to be provided in their entirety, following the normal timing rules.

(l) Series of sales—delay in disclosures. Paragraph (l) incorporates current § 226.8(h) and Board Interpretations §§ 226.804 and 226.805. It implements § 128(d) of the act.

(m) *Multiple advance transactions; series of sales.* Paragraph (m) combines the provisions of present § 226.8(i) and (m). Neither situation is addressed in the act. Present § 226.8(i) makes it optional for a creditor to treat a series of advances pursuant to an agreement as a single transaction. The proposal definitely requires them to be treated as a single transaction. Present § 226.8(m) has not been substantively altered.

Section 226.12—Determination of Annual Percentage Rate

Section 226.12, setting forth the rules for calculation of the annual percentage rate in closed-end credit transactions, is substantially similar to § 226.5(b) of the current regulation (as amended effective January 10, 1980). One minor change is found in paragraph (e), relating to calculation of the annual percentage rate where the transaction involves irregularities in the payment schedule. Additional guidance has been provided on how to determine the length of the periods in order to measure the irregularity. A regular period is the most common payment interval in the transaction. In measuring the length of that period, the creditor looks to the next regular period after the irregularity, and, as a general rule, measures the length based on the actual number of days. In transactions involving months, semi-months, or multiples of a month, however, the creditor could use either the actual number of elapsed days or an assumed 30-day month in calculating the length of the periods involved.

A more important change is the elimination of a provision found in current § 226.5(c). Under the existing provision, an error in disclosing the annual percentage rate or finance charge that results from an error in the calculation tool used in good faith by the creditor is not considered a violation of the regulation. The creditor thus has no liability under the act. The Board believes that this protection is no longer necessary or appropriate for the regulation, in view of the fact that § 130 of the act has been amended to provide a defense to civil liability where errors result from the good faith use of calculation tools. In the Board's view, this change in the act, combined with the administrative enforcement agencies' present policy of not requiring reimbursement for violations in such cases, makes the existing regulatory provision unnecessary. Thus, under the revised regulation, there would be no counterpart to the present § 226.5(c).

Supplement I, which contains the detailed rules and equations for calculation of annual percentage rates was recently revised by the Board. No further revisions are planned at this time. If it should later be determined that revision is necessary, or if the comments suggest changes that should be made, they will be published for comment.

Section 226.13—Right of Rescission

(a) Consumer's right to rescind. Section 226.13(a) implements § 125(a) of the act, granting a consumer the right to rescind a transaction in which a security interest is retained in a consumer's principal dwelling. In one way, the applicability of the right of rescission has been narrowed when compared to the general rule in § 226.9(a) of the existing regulation. The present rule permits rescission whenever real property used or "expected to be used" as a consumer's principal residence is involved. Since the amended statute eliminates the "expected to be used" language, the proposed rule does also. Therefore, the right of rescission applies only where the property is used as the consumer's principal dwelling at the time the security interest is retained.

On the other hand, the applicability of the right to rescind has been somewhat broadened since it no longer is limited to security interests in *real* property, but rather applies to any property used as the principal dwelling. Therefore, it could apply to mobile home-secured transactions, even where the mobile home is considered personal property under state law.

Footnote 67 provides that adding a security interest in the dwelling to an existing obligation is a rescindable transaction. It should be emphasized that the right of rescission applies only to the addition of the security interest; if the right is exercised, it does not void the earlier obligation.

Under paragraph (a)(1), the right of rescission is available to any consumer whose ownership interest is subject to the security interest. This language clarifies the rule in present § 226.9(f). The Board intends the right of rescission to apply to any obligor, co-owner, guarantor, or surety whose ownership interest in his or her own principal residence is subject to the risk of loss. This differs from the present regulatory language, which appears to extend the right to rescind to any co-owner whether or not that person's ownership interest is encumbered. The Board believes that there is no reason for the right of rescission to apply to a person whose ownership interest is in no way implicated in the credit transaction.

Paragraph (a)(2) describes how the right of rescission may be exercised by the consumer and when notice is considered given. It generally restates the corresponding provisions in § 226.9(a) of the existing regulation.

Paragraph (a)(3) provides that the rescission period runs from the later of the consummation of the transaction or delivery of the rescission notice and all other material disclosures. Footnote 68 defines "material disclosures" to be the basic credit cost terms included in § 226.11(f) and (h). The "material disclosures" may be either transactional or alternate shopping disclosures. Disclosure of a security interest is not a "material disclosure" for rescission purposes since the existence of a security interest in the dwelling will be stated in the rescission notice itself under paragraph (b).

Paragraph (a)(3) is silent as to when a creditor must deliver the rescission notice to a customer. The notice may be delivered before or after consummation of a transaction and before or after disclosure of the other material disclosures. But delivery of the notice is one of the conditions that must be satisfied before the three-day rescission period starts to run.

The last sentence in paragraph (a)(3) corresponds to amended § 125(f) of the act and states the rule for expiration of the right of rescission. The general rule is that the right expires the earlier of three years from consummation or the transfer of the property. A transfer includes sale and other types of transfers, such as gift and bequest. In the Board's opinion, both voluntary and involuntary transfers terminate the right of rescission. Therefore, a foreclosure sale could cause the right to expire. To implement the recent amendment to § 125(f), an exception to the general rule has been added. If certain administrative proceedings are instituted, the rescission period will continue for one year following the conclusion of those proceedings.

(b) *Notice of right to rescind.* Paragraph (b) replaces present § 226.9(b). One change is that the precise language of the rescission notice is no longer specified in the proposed regulation. Instead, to give creditors more flexibility, the proposal simply stipulates four disclosures that must be included in the notice. A model form that may be used and that will insulate a creditor who uses it from civil liability, is included in the appendix. The creditor may provide a separate form that a consumer may use to exercise the right of rescission or that form may be combined with the other rescission disclosures, as is done in the Board's model form. Note that only one copy of the rescission notice, rather than two, need be given to a consumer.

(c) *Delay of creditor's performance.* Paragraph (c) essentially restates § 226.9(c) of the existing regulation and prohibits disbursement of money (other than into escrow), performance of services, or delivery of materials until the creditor is reasonably satisfied that the consumer has not rescinded the transaction.

(d) *Effects of rescission.* Paragraph (d) implements amended § 125(b) of the act. The time period within which the creditor must return a consumer's money or property and terminate a security interest after receiving notice of rescission has been expanded from 10 to 20 days. A creditor also has 20 days, instead of 10, to take back the money or property after a consumer has offered to return it.

The final sentence of paragraph (d), which permits the procedures to be modified by court order, reflects the recent statutory amendment to § 125(b). In the Board's view, this could apply, for example, to a situation where a consumer is in bankruptcy proceedings and may be prohibited from returning anything to the creditor.

(e) *Consumer's waiver of right to rescind.* Paragraph (e) corresponds to § 125(d) of the act. The requirement in the act that an emergency be "bona fide" and "personal" is eliminated since the general requirement of a "financial" emergency appears to sufficiently cover the situations where waiver would be appropriate. The provision makes clear that a waiver must be signed by all persons entitled to rescind.

(f) *Exempt transactions.* Paragraph (f) is based on amended § 125(e) of the act. The first exemption, residential mortgage transactions (as defined in proposed § 226.2(aa)), combines the purchase money and construction loan exemptions contained in present § 226.9(g)(1) and (2). Note, however, that transactions can qualify for this new exemption whether they have first lien status or not. Thus a second lien transaction made to acquire a dwelling would be exempt under the proposal, although it is now subject to rescission.

Paragraph (f)(2) incorporates the position taken in present Board Interpretation § 226.903 concerning the right of rescission in refinancings. The right applies only to the extent that a refinancing by the same creditor involves new advances, and then only to the extent of those advances. If the refinancing is with a different creditor, it is subject to rescission.

Paragraph (f)(3) exempts state and federal agencies from the rescission provisions. Although the act mentions only state agencies, the Board believes that the policy reason for exempting state agencies is equally applicable to federal agencies.

Paragraph (f)(4) corresponds to proposed § 226.11(m), covering series of advances and series of single payment obligations that are treated as a single transaction. Just as new disclosures need not be made for subsequent advances, no new rescission rights arise so long as the appropriate notices were provided at the outset of the transaction.

Paragraph (f)(5) exempts any subordination of a security interest and parallels § 226.9(g)(3) of the present regulation. The Board believes subordination per se is not a rescindable event, regardless of whether the original transaction was rescindable. This provision is broader than present § 226.9(g)(3), which exempts only transactions in which the security interest was originally exempt from the right of rescission. If new funds are advanced by the creditor at the time of subordination of the security interest, the rules for refinancings in paragraph (f)(2) would apply, and the consumer has the right to rescind to the extent of the new advances.

Section 226.14—Advertising.

Section § 226.14, implementing Chapter 3 of the act, contains rules for advertising closed-end consumer credit. For the most part, the proposal reflects the approach taken in § 226.10 of the current regulation.

(a) *Generally available terms; accuracy of advertising.* Paragraph (a)(1) restates the present § 226.10(a) in a more abbreviated form. Paragraph (a)(2) is a new provision and imposes a general standard of accuracy on the advertising of consumer credit.

(b) *Advertisement of rate of finance charge.* Section 226.14(b) requires advertised rates of finance charge to be stated in terms of an annual percentage rate. This paragraph is substantially similar to the present § 226.10(d)(1), including the authorization to show a simple annual rate or periodic rate along with the annual percentage rate.

(c) *Advertisement of terms that trigger additional disclosures.* In its use of "triggering" terms as the basis for more complete disclosure, paragraph (c) takes the same approach as is utilized in the present § 226.10(d)(2), but it has been restructured for clarity. Paragraph (c)(1) sets forth the credit terms whose use in advertising requires disclosure of the credit terms listed in paragraph (c)(2). The terms that trigger disclosure are unchanged from the current regulation, but the number of items that have to be disclosed has been reduced, reflecting the recent amendment to § 144(d) of the act. Under the proposal, an advertisement using a "triggering" term would have to disclose only the downpayment or that none is required, the repayment schedule, and the annual percentage (together with any variable rate provision). In making these disclosures, creditors may use examples and avail themselves of any special disclosure provisions in § 226.11.

(d) *Transactions involving a dwelling.* Paragraph (d) includes a special rule to facilitate the advertising of mortgages with varying payments due to mortgage insurance. It permits a shorthand disclosure of the varying payment schedule.

Under the act, the Board is empowered to treat residential real estate transactions differently or even exempt them from the requirements of the advertising provisions. This paragraph reflects a special rule for such transactions and the Board solicits comment on whether it is appropriate as well as on the need for any further relief in this area.

(e) *Catalogs and multiple-page advertisments.* Paragraph (e) is substantially similar to existing § 226.10(b), with the addition of paragraph (e)(2) to make it clear that all the terms required by paragraph (c)(2) must be provided for a representative range of transactions.

(f) *Use of annual percentage rate in oral disclosures.* Paragraph (f) reflects the current Board Interpretation § 226.101 and implements § 146 of the act.

Subpart D—Leasing

Section 226.15—Disclosures

Section 226.15 contains the basic rules relating to consumer leases. Following the organizational framework established throughout the proposal, paragraphs (a) through (d) set forth technical rules relating to timing, form, and other general matters. These paragraphs are similar to their counterparts in § 226.11, disclosures for closed-end credit, and the above discussion relating to that section generally applies here. The differences that do exist between these paragraphs in §§ 226.11 and 226.15 generally involve the omission of material deemed inapplicable to leasing. The provisions that have been added to reflect concerns related to leasing are discussed below.

A number of staff interpretations have been incorporated into the proposal. The Board solicits comment on whether other interpretations could appropriately be included in the regulation.

(a) *Who must make disclosures to whom.* This paragraph is substantively the same as § 226.11(a). Section 182 of the Consumer Leasing Act requires that each lessor give the consumer the required disclosures. The proposal provides, like the closed-end credit provisions, that only one lessor need make disclosures. The Board solicits comment on this change.

(b) *Timing and form of disclosures.* Paragraph (b)(2) differs from its counterpart in § 226.11 in that it requires the disclosures to be dated. This additional requirement stems from § 182 of the act. Other provisions of the current regulation, such as the special exemption for multiple-item leases, have also been retained. The proposal requires segregation of disclosures from other information.

(c) *Basis of disclosures and use of estimates.* Paragraphs (c)(1) and (3) are substantively identical to § 226.11(d)(1) and (3) of this proposal. Paragraph (c)(2) is similar to § 226.11(d)(2), with the additional provision that a lessor may understate the estimated value in calculating the total lease obligation. This provision is similar to § 226.6(f) of the current regulation, but has been amended to permit lessors to understate the estimated value in *any* consumer lease, rather than in purchase option leases only, as is the case under the current regulation. This may be done, however, only if any excess of realized value over estimated value will be returned to the consumer at the end of the lease term. The Board believes that this condition does not materially reduce the consumer protection offered by the current regulation.

(d) *Effect of subsequent events.* This paragraph is substantively identical to § 226.11(d) of the proposal.

(e) *Content of disclosures.* This paragraph is largely unchanged from § 226.15(b) of the current regulation, although the disclosures relating specifically to open-end leases have been taken out of the list of generally applicable disclosures and placed in a separate paragraph immediately following this one.

Paragraphs (e)(1) and (2) incorporate the requirement in current § 226.15(a) that the identity of the lessor and consumer be disclosed. Only one lessor need be identified, even where there are several. The requirement that the lessee be identifed is found in § 182 of the act.

Paragraph (e)(3) adopts, without substantive change, elements of present § 226.15(a) and (b)(1).

Paragraph (e)(4) is an amended version of present § 226.15(b)(2). It is standard practice for lessors to receive payments of the type described in this provision after consummation, at or before the time the leased property is delivered to the consumer. Such charges are generally disclosed under present § 226.15(b)(5), which relates mainly to payments made at the end of the lease term. It appears that a more logical treatment of these charges would be to include them with other initial payments, even though they are made after consummation. The proposal therefore requires that all payments that are to be made at or before delivery of the leased property must included in the total figure disclosed under this paragraph. This change is also reflected in the definition of "total lease obligation" under proposed § 226.2(dd).

Paragraph (e)(5) remains substantively the same as § 226.15(b)(3) of the current regulation, as it has been interpreted in several official staff interpretations. Thus, in conformity with the amended definition of "total lease obligation" under proposed § 226.2(dd), only lease charges that are financed by the lessor are included in this item. The language has also been amended to conform to similar sections in Subparts B and C. Footnote 71 permits a simplified payment schedule disclosure if the payments in a series vary within a range of 5 percent of the lowest payment in the series. This special rule is similar to that provided in footnote 59 to § 226.11(f)(6), and the concept is discussed more fully above in connection with that section.

Paragraph (e)(6) differs from present § 226.15(b)(4) only in that initial charges disclosed under proposed paragraph (e)(4) would not be included in this total. Since any charges of this kind that are paid initially will be disclosed under paragraph (e)(4) there is no need to include them here. Note that if they are financed, however, the initial charges will be reflected in the schedule of payments under § 226.15(e)(5).

Proposed paragraph (e)(7) differs from present § 226.15(b)(5) by expressly eliminating from this item any charges already disclosed under paragraphs (e)(4) (initial payments), (e)(5) (schedule of payments), and (e)(6) (official fees and taxes). This change incorporates into the proposed regulation a position taken in present Board Interpretation § 226.1501.

Paragraph (e)(8) differs from current § 226.15(b)(6) only in that insurance procured by the lessor for its own benefit (such as residual value insurance to protect the lessor's interest, or its equivalent) has been explicitly excluded. Neither the cost nor the coverage of such insurance needs to be disclosed under the proposed regulation.

Paragraph (e)(9) is unchanged from current § 226.15(b)(2).

Paragraph (e)(10) adds to current § 226.15(b)(8) the requirement that if a maintenance agreement (such as a mechanical breakdown protection contract) is provided or paid for by the lessor, a brief description of the coverage must be disclosed.

Paragraph (e)(11) adopts without change the second half of current § 226.15(b)(8).

Paragraph (e)(12) is substantially the same as current § 226.15(b)(9). The last sentence in the proposal makes clear that any security interest in after-acquired property must also be disclosed. The Board solicits comment on any further change that could be made in this disclosure or in the definition to clarify the security interest disclosure requirements for leasing.

Paragraph (e)(13) expands § 226.15(b)(10) of the current regulation to include dollar charges for excessive wear or use. Deferral or extension charges, however, need not be disclosed. The continued accrual of a lease charge in a so-called simple interest lease when a periodic lease payment is late need not be disclosed, confirming the position taken in Official Staff Interpretation FC-0156.

Paragraphs (e)(14) and (e)(15) are substantively unchanged from present § 226.15(b)(11) and (12), respectively.

(f) *Special disclosures concerning the consumer's liability on termination of a lease.* The material contained in § 226.15(b)(13), (14), and (15) of the current regulation relates only to open-end leases. (Briefly, an open-end lease is one in which the consumer may be liable for the difference between the actual or "realized" value of the leased property at the end of the lease term and its "estimated" value or the amount the lessor thought it would be worth.) The proposed amendments segregate these sections from the generally applicable disclosure requirements in order to make clear that they relate only to open-end leases.

Paragraph (f)(1) restates current § 226.15(b)(13), without substantive change.

Paragraph (f)(2) adopts the substance of § 226.15(b)(14) of the current regulation, with the additional provision that the appraisal must be obtained within a reasonable time after the lease has been terminated or has run its term. The Board solicits comment on whether the standard of "reasonableness" is too vague, and whether it should be either amended to set a specific time frame or eliminated entirely.

Paragraph (f)(3) is substantially the same as § 226.15(b)(15) of the current regulation. One addition in the proposal, however, is a disclosure that any final agreement must be reached after termination of the lease in order to be binding. This disclosure is based on § 183(a) of the act.

(g) *Renegotiations—new disclosures.* This paragraph is a revision and extension of § 226.15(c) of the current regulation. Proposed paragraph (g)(1) sets out the basic rule that a renegotiation must be treated as a new transaction and that new disclosures must be given.

Paragraph (g)(2) lists some changes in terms for which no new disclosures are required even though they might fit the definition of a "renegotiation." Paragraph (g)(2)(i) relates to certain changes in multiple-item leases, adopting without significant change present § 226.15(c)(1); (g)(2)(ii) exempts a deferral of all or part of one periodic lease payment; and (g)(2)(iii) covers the addition or renewal of optional insurance that is purchased by the consumer after consummation. Under the last of these three provisions, no new disclosures would have to be made on the underlying lease if the insurance is financed and the appropriate credit disclosures are given for the insurance transaction itself. This rule applies, however, only where the purchase of insurance is genuinely separate from the underlying lease.

The provision in present § 226.15(c)(2) that only extensions of leases for six months or less are not renegotiations has been eliminated. Under the proposal, a lessor that enters into an agreement with a consumer to extend the term of a lease (on a month-to-month or other basis) need not make new disclosures, provided that no other terms are changed.

Paragraph (g)(3) is new. It requires lessors that extend, or permit a consumer to extend, the duration of an open-end lease for more than one month to recalculate the estimated value of the leased property in order to reflect the actual lease term. The new estimated value need not be determined until the property is returned. In any case, however, the lessor must use the same method of calculation originally used to determine the estimated value of the leased property when recalculating that figure for purposes of this paragraph and § 183(a) of the act. The Board particularly solicits comment on this proposed change. The applicability of the three monthly payment limitation when a consumer extends the lease has been unclear. The Board believes that the limitation continues to apply, but proposes to permit lessors to recalculate the value of the property based on the actual rather than the anticipated lease term in such cases.

Section 226.16—Advertising

This section incorporates the various parts of § 226.10 of the current regulation that relate to the advertising of consumer leases.

(a) *Generally available terms.* Proposed paragraph (a) restates the substance of § 226.10(a)(2) of the current regulation, in somewhat simpler language.

(b) *Advertisement of terms that require additional disclosures.* This paragraph, which is based on § 184(a) of the act, is substantially the same as § 226.10(g) of the current regulation. In addition, it clarifies that lessors may use examples of typical consumer leases in their advertisements, reflecting the position taken in Board Interpretation § 226.1001.

(c) *Multiple-item leases—merchandise tags.* This paragraph is substantially the same as § 226.10(h) of the current regulation.

(d) *Catalogs and multiple-page advertisements.* Paragraph (d) restates the provisions of § 226.10(b) of the current regulation as they apply to leasing advertisements, without significant change. Paragraph 9d)(2) incorporates the substance of Board Interpretation § 226.1002 into the regulation.

Subpart E—Miscellaneous

Subpart E contains general provisions which apply equally to openend credit, closed-end credit and leasing transactions. While most of the five sections concern administrative matters, the topics covered vary, ranging from state exemption procedures to Spanish language disclosures.

Section 226.17—Record Retention

Section 226.17 specifies the period of time for which disclosure statements or other evidence of compliance must be retained. It has no statutory counterpart, but is analogous to the present § 226.6(i). As under the current regulation, records must be kept for at least two years, measured from the point when disclosures were required to be given. While the Board believes that advertising has always been subject to this requirement as well, a specific reference to advertisements has been added to clarify this point. In the existing regulation, a special record retention rule applies to creditors subject to the five federal agencies participating in the Regulation Z Enforcement Guidelines (44 FR 1444, January 4, 1979). Under the amended act, the enforcement policy reflected in the guidelines must now be applied by all administrative agencies. Since it is uncertain how these new statutory enforcement provisions will be implemented, the Board proposes to eliminate this special rule. In its place, proposed § 226.17 recognizes the authority of each administrative agency to extend the record retention period beyond the minimum two-year requirement, as necessary to carry out its enforcement responsibilities. The Board specifically requests comment on this alternative to the approach in current § 226.6(i)(2).

Section 226.18—Spanish Language Disclosures

Under § 226.18, a creditor or lessor operating in Puerto Rico may provide either Spanish or English disclosures. As in present § 226.6(a), however, a creditor or lessor must honor a request by a consumer for English language disclosures. The last sentence of § 226.18(b) makes it clear that advertisements are not subject to the rule regarding customers' requests for disclosures in English.

Section 226.19—Effect on State Laws

This section, which implements §§ 111(a), 171(a), and 186(a) of the act, sets forth procedures for determining whether a state law is inconsistent with or substantially similar to a requirement of the regulation. Any person may apply to the Board for such a determination. Under § 226.19(a), a creditor or lessor is not permitted to comply with an inconsistent state law. Under § 226.19(b), which implements § 111(a)(2), as amended, a creditor is specifically authorized to bypass a requirement of Regulation Z in favor of a state provision determined by the Board to be substantially similar. The procedures proposed in this section have no counterpart in the current regulation, and the Board invites comment on them.

The Board has refrained from setting forth specific standards for determining inconsistency and substantial similarity in the belief that each request may present unique circumstances requiring an individual analysis. The Board invites comment, however, on the need for more specific criteria for making these judgments, as well as on the criteria appropriate to the decisions.

Section 226.20—State Exemptions

This section implements § 123 of the act. The substance of § 226.20 is similar to current § 226.12, but it has been restructured for added clarity. As under the current regulation, the standards for exemption of state-regulated transactions are somewhat different for chapter 2 (credit transactions), chapter 4 (credit billing), and chapter 5 (consumer leases) of the act, reflecting the various statutory provisions. The procedures for applying for an exemption are set forth in present Supplements II, IV, V, and VI, which will be revised if necessary to reflect the regulation ultimately adopted by the Board.

Section 226.21—Issuance of Staff Interpretations

This section defines the types of interpretations issued by the staff and provides procedures for their issuance. While this provision is not substantially different from current § 226.1(d), the scope of interpretations is somewhat modified. The prohibition against approving forms is extended to tools or methods for calculating required disclosures, such as the annual percentage rate. However, forms and methods prescribed by government agencies are not subject to this prohibition. Under amended § 113 of the act, such agencies may be required to consult with the Board regarding the Truth in Lending implications of their activities. In appropriate cases, forms and tools generated by those agencies may be the subject of interpretations specifically sanctioning their use. This does not represent a significant departure from the current situation in which interpretations have occasionally been issued regarding government forms and/or calculation methods. "Government agency," as that term is used in proposed § 226.21(d), includes state and federal entities, as well as certain quasigovernmental organizations, such as those relating to home financing and student loans.

Appendix A

Appendix A includes model forms and clauses for use in open-end and closed-end credit transactions. (Leasing forms are not included at this time.) Amended § 105 of the act requires the Board to publish such forms to facilitate compliance by creditors and to aid consumers in understanding their transactions. Use of these forms and clauses is not mandatory; however, as provided in § 105(b), creditors who properly use them will be deemed to be in compliance with the requirements of the regulation. Creditors may delete inapplicable information and rearrange the format, provided the substance, clarity, and meaningful sequence of the disclosures are not affected.

Comments are solicited on all aspects of these forms and clauses, including design, content, and usefulness. If additional forms and clauses should be provided, suggestions will be welcome.

The model form for tranactional disclosures, which appears as Section (A)(7), is a model for both closed-end credit sales and loans. Items not generally applicable to all types of transactions are marked by asterisks, along with explanatory footnotes.

The phrases in parentheses are the descriptors required by the act. As mandated by § 226.11(f)(3) and (4), the phrases accompanying "finance charge" and "annual percentage rate" must be used. However, the exact wording of the descriptors accompanying "amount financed," "total of payments," and "total sale price" need not be used by a creditor.

The phrases in brackets are given as alternatives and may be changed to suit the specific terms of transaction. For instance, the form states that the "total of payments" will be paid in [monthly] payments. This term could be changed to correspond to whatever the scheduled period of payments is. Another example is the disclosure of credit life insurance [for — years]. The term of the insurance need not be stated at all unless the term is shorter than the term of the transaction, as provided in proposed § 226.4(d)(1)(ii). The signed and dated acknowledgment at the end of the form is also optional. Proposed § 226.11(c)(3) provides than an acknowledgment of receipt may, but need not, be included in the disclosure statement.

Two disclosures marked by asterisks are necessary only in certain types of transactions. The "total sale price" is required only for credit sales, as the footnote explains. The other term marked by asterisks is the statement of whether or not a subsequent purchaser may assume the obligation on its original terms. As the footnote provides, this disclosure is required only for residential mortgage transactions.

The form for alternate shopping disclosures, which appears as Section A(9), differs from the others since it is not a model, but a sample. Therefore, instead of being generally applicable to any transaction for which alternate shopping disclosures are given, this form sets out the specific terms and figures for a hypothetical credit sale transaction.

The notice of right to cancel, which appears as Section A(10), is a model form for a closed-end credit transaction in which a security interest in a dwelling is taken at the time the transaction is entered into. A somewhat different form would be necessary for transactions in which a security interest is added to an existing obligation, since that notice would have to reflect the fact that the right of rescission applies only to the addition of the security interest, and not to the existing obligation. Another form may also be required for refinancings to reflect the fact that, in general, the right of rescission applies only to additional advances.

Appendix B

Appendix B contains an explanation of how the annual percentage rate is computed for certain open-end credit plans involving application of both a periodic rate and a transaction charge. It relates to proposed § 226.8(c)(2)(iii)(B). Examples of how the computation is done are included.

In consideration of the foregoing and pursuant to the authority granted in § 105 of the Truth in Lending Act (15 U.S.C. 1604, as amended), the Board proposes to issue a revised Regulation Z (12 CFR Part 226) as follows:

PART 226—TRUTH IN LENDING

Subpart A—General

226.1 Authority, purpose, scope, organization, circumvention or evasion.
226.2 Definitions and rules of construction.
226.3 Transactions exempted from the regulation.
226.4 Finance charge.

Subpart B—Open-End Credit

226.5 Disclosures.
226.6 Credit card transactions; special requirements.
226.7 Billing error resolution.
226.8 Determination of annual percentage rate.
226.9 Right of rescission.
226.10 Advertising.

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226.17 Record retention.
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226.21 Issuance of staff interpretations.

Appendix A: Model Disclosure Forms and Clauses
Appendix B: Annual Percentage Rate Computations

Authority: Title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601–1667).

Subpart A—General

§ 226.1 Authority, purpose, scope, organization, circumvention or evasion.

(a) *Authority.* This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending, Fair Credit Billing, and Consumer Leasing Acts, which are contained in Title I of the Consumer Credit Protection Act, as amended (Title 15, §§ 1601 through 1667 of the United States Code).

(b) *Purpose.* (1) The general purpose of this regulation is to require disclosure of information about the cost and terms of consumer credit and consumer leases to promote their informed use by consumers. The regulation also gives a consumer the right to cancel certain credit transactions that involve a lien on the consumer's principal residence, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes.

(2) This regulation is not intended to govern charges for consumer credit or

consumer leases, nor is its purpose to regulate trade practices except to the extent that those practices are inconsistent with the requirements of the regulation.

(c) *Scope.* (1) In general and subject to the applicable definitions in § 226.2 and the exemptions in § 226.3, the credit provisions of this regulation (Subparts B and C) apply to each individual or business that offers to extend credit (that is, the obligation will be payable on its face or by agreement to the individual or business) if four conditions are met. They are: first, the credit must be offered to consumers (that is, natural persons, not businesses, government units, or organizations); second, the offering of credit to consumers must be done regularly by the individual or business; third, the credit must be subject to a finance charge or must be repayable by agreement in more than four installments; and, fourth, the credit must be primarily for personal, family, or household purposes. Note that where a credit card is involved, however, certain provisions of the regulation apply even if the credit is not subject to a finance charge or is not repayable by agreement in more than four installments; see the definition of "creditor" in § 226.2(q). Also note that certain provisions apply even if a credit card is used or expected to be used by an individual or a business for business purposes; see the special requirements for credit card transactions in § 226.6.

(2) Subject to the applicable definitions in § 226.2 and the exemptions in § 226.3, the leasing provisions of this regulation (Subpart D) generally apply to each individual or business that offers to lease or arranges for the lease of property if five conditions are met: first, the leases must be offered to or arranged for consumers; second, the offering or arranging of personal property leases to consumers must be done regularly by the individual or business; third, the leases must be of personal property; fourth, the lease term must be for more than four months; and fifth, the leases must be primarily for personal, family, or household purposes.

(d) *Organization.* (1) The regulation is divided into five subparts in order to enhance its ease of use by grouping together provisions relating to general matters, open-end credit, closed-end credit, consumer leasing, and miscellaneous rules. Thus, for each type of transaction—open-end credit, closed-end credit, consumer lease—a person generally need consult only one self-contained subpart of the regulation to determine the applicable rules, referring only as necessary to the definitions and procedural rules.

(2) Subpart A contains general information. It sets forth the basis, purpose, scope, and organization of the regulation, the definitions of basic terms used in the regulation, the transactions that are exempted from coverage, and the method of determining the finance charge for consumer credit obligations.

(3) Subpart B contains the rules relating to open-end credit. Those provisions explain what initial and periodic disclosures are required, what special rules apply to credit card transactions, what procedures must be followed for resolving billing errors, how to determine the annual percentage rate, what rules govern the three-day cooling-off period applicable to certain mortgage transactions (a procedure called rescission), and what rules apply to advertising.

(4) Subpart C covers closed-end credit disclosures, annual percentage rate calculations, rescission requirements, and advertising rules.

(5) Subpart D contains the consumer leasing disclosure and advertising rules.

(6) Subpart E collects the miscellaneous rules regarding record retention, Spanish language disclosure in Puerto Rico, inconsistent state law requirements, criteria for obtaining an exemption based upon a similar state law, and prodedures for seeking a staff interpretation.

(7) Following Subpart E are two appendices—one containing model disclosure forms and language for open-end and closed-end credit, and the other containing rules for computing an annual percentage rate in certain open-end credit plans.

(e) *Circumvention or evasion.* Any person subject to the requirements of this regulation shall not take any action for the purpose of circumventing or evading those requirements.

§ 226.2 Definitions and rules of construction.

For the purposes of this regulation, the following definitions and rules of construction apply:

(a) "Advertisement" means a message in any medium that is designed to promote, directly or indirectly, any credit or lease transaction. The term does not include the alternate shopping disclosures for closed-end credit permitted by § 226.11(h) of Subpart C.

(b) "Arrange for a lease" means regularly to offer a consumer lease to be extended by another person if the person who offers to arrange the lease receives compensation for that service or participates in preparing the lease contract with knowledge of its terms.

(c) "Arranger of credit" means a person who regularly offers consumer credit to be extended by another person if—

(1) A finance charge may be imposed for that credit, or the credit is payable by agreement in more than four installments; and

(2) The person extending the credit is not a creditor.

(d) "Billing cycle" or "cycle" means the interval between the days or dates of regular periodic statements. These intervals shall be no longer than a quarter of a year. They shall be equal and may be considered equal unless the number of days in a cycle varies by more than four days.

(e) "Board" means the Board of Governors of the Federal Reserve System.

(f) "Business day" means a calendar day except Sunday and the federal holidays of New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day (as specified in Title 5, § 6103(a) of the United States Code).

(g) "Cardholder" means a person to whom a credit card is issued for any purpose, including business or commercial, or a person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

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

(i) "Cash price" means the price at which the creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. The term includes charges imposed by the creditor equally on cash and credit customers. It may include the price of optional accessories, services related to the sale (such as delivery, installation, modification, and improvements), and service contracts. The term does not include any finance charge.

(j) "Closed-end credit" means consumer credit other than open-end credit as defined in paragraph (u) of this section.

(k) "Consumer" means a cardholder or a natural person to whom consumer credit or a consumer lease is offered, and it includes a comaker, endorser, guarantor, surety, or similar person who may be obligated to repay the extension of credit or the lease obligation.

(l) "Consumer credit" means credit offered by a creditor to a consumer primarily for personal, family, or household purposes.

(m) "Consumer lease" means an obligation in the form of a bailment or lease for the use of personal property by a consumer primarily for personal, family, or household purposes, for an original term of more than four months, for a total lease obligation not exceeding $25,000, whether or not the consumer has the option to purchase or otherwise become the owner of the property at the end of the lease term.

(n) "Consummation" means the time that a consumer becomes obligated on a credit or lease transaction or pays any nonrefundable fee, other than a bona fide applicable fee.

(o) "Credit" means the right granted by a creditor to a consumer to defer payment of debt or to incur debt and defer its payment.

(p) "Credit card" means any card, plate, coupon book, or other device that may be used from time to time to obtain credit.

(q) "Creditor" means (1) A person

(i) Who regularly extends consumer credit that may be subject to a finance charge or that is payable by agreement in more than four installments and

(ii) To whom the debt arising from the transaction is initially payable on the face of the evidence of indebtedness or, if there is no evidence of indebtedness, by agreement;

(2) An arranger of credit;

(3) A card issuer; or

(4) For the purposes of §§ 226.4(f), 226.5(j) and 226.6(e) of Subpart B, a person who honors a credit card.

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

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

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

(s) "Dwelling" means a residential structure that contains one to four units or a mobile home or trailer, whether or not attached to real property. The term includes individual condominium or cooperative units.

(t) "Lessor" means a person who regularly leases, offers to lease, or arranges for a lease.

(u) "Open-end credit"[1] (1) Means consumer credit extended by a creditor on an account under a plan in which

(i) The creditor reasonably contemplates repeated transactions;

(ii) The consumer has the privilege of paying the balance in full at any time, without penalty or additional charge imposed for payment in full;

(iii) A finance charge may be imposed by the creditor from time to time on an outstanding unpaid balance; and

(iv) The amount of credit that may be extended to the consumer during the term of the plan, up to any limit set by the creditor, is replenished to the extent that the consumer repays any outstanding balance.

(2) For purposes of the requirements of §§ 226.5(b)(2), (3), (4), and (6); 226.5(c)(1), (2), (3), (9), (10), (11); 226.5(e), (g), (h), (i), and (j); 226.6(c), (d), and (e); and 226.7 of Subpart B, includes consumer credit extended on an account under a plan that meets criteria (i), (ii), and (iv) of paragraph (u)(1) of this section, whether or not a finance charge may be imposed by the creditor.

(v) "Periodic rate" means a percentage rate or the decimal equivalent of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

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

(x) "Personal property" means property that is not real property under the law of the state in which it is located at the time it is offered or made available for lease.

(y) "Realized value" means (1) The price received by the lessor for the leased property at disposition;

(2) The highest offer for disposition; or

(3) The fair market wholesale or retail value at the end of the lease term if the use of wholesale or retail value is consistent with the estimated vlaue made at consummation.

(z) "Required deposit balance" means a deposit balance or investment that a consumer is required to make, maintain, or increase in a specified amount as a condition of the extension of credit. The term does not include a deposit balance or investment that will earn interest or dividends during the term of the obiligation, or an escrow account for the payment of taxes or insurance.

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

(bb) "Security interest" or "security"[2] means an interest in property that secures performance of a consumer credit or lease obligation and that is recognized by and enforceable under state law.

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

(dd) "Total lease obligation" means the sum of (1) The total of all scheduled periodic lease payments, excluding any charge upon which a lease charge is not assessed (such as an insurance premium paid directly to the insurer or that is not financed by the lessor);

(2) Any nonrefundable payment made by the consumer at or prior to delivery of the leased property for the purpose of reducing the amount that will be amortized over the term of the lease; and

(3) The estimated value of the leased property at the end of the lease term.

(ee) "Value of the property at consummation" means the cost to the lessor of the leased property, including, if applicable, any increase or markup by the lessor prior to consummation.

(ff) Where appropriate, the singular form of a word is to be construed to include the plural form and vice versa.

(gg) Where the words "obligation" and "transaction" are used in this regulation, they refer to a consumer credit or a consumer lease obligation or transaction, depending upon the context. Where the words "credit" and "lease" are used in this regulation, they mean "consumer credit" and "consumer lease," respectively, unless the context clearly indicates otherwise.

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

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

§ 226.3 Transactions exempted from the regulation.

This regulation does not apply to the following types of credit or lease:

(a) *Business, agricultural, or organizational credit.* An extension of

[1] The creditor of an open-end credit account may verify credit information regarding the consumer from time to time without affecting the classification of the account as open-end credit.

[2] The terms may include, for example, a security interest under the Uniform Commercial Code, a real property mortgage or deed of trust, any other consensual or confessed lien (whether or not recorded), a right of set-off (whether provided by agreement or by operation of law), a lien that may arise by virtue of a confession of judgment or cognovit provision if the consumer does not have the right to prior notice and opportunity to present a defense, and any lien that may arise by operation of law.

credit primarily for a business, commercial, or agricultural[3] purpose or to a person other than a natural person, except with regard to the issuance of credit cards and the liability for their unauthorized use as provided in paragraphs (a) through (f) of § 226.6.

(b) *Credit over $25,000 not secured by real property for a dwelling.* An extension of credit not secured by real property or a dwelling in which the amount financed exceeds $25,000 or in which the transaction involves a specific written commitment to extend credit in excess of $25,000.

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

(d) *Securities or commodities credit.* An extension of credit for the purchase of securities or commodities where the credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) *Certain leases.* The following types of leases:

(1) A lease primarily for agricultural, business, or commercial purposes, or to a person other than a natural person.

(2) A lease of personal property incident to a lease of real property if—

(i) The consumer has no liability for the value of the property at the end of the lease except for abnormal wear and tear; and

(ii) The lessee has no option to purchase the leased personal property.

(3) A lease of a safe deposit box or its substantial equivalent.

§ 226.4 Finance charge.

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

(b) *Charges included in the finance charge.* Unless specifically excluded by paragraphs (c) through (f) of this section, the finance charge includes the following types of charges:

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

(2) Service, transaction, activity, or carrying charge, including any charge imposed in connection with a checking or similar transaction account (for example, for issuance, payment, or handling of checks or for account maintenance) to the extent that it exceeds the charge for a similar account without a credit feature.

(3) Points, loan fee, assumption fee, finder's fee, or similar charge.

(4) Appraisal, investigation, or credit report fee.

(5) Premiums [4] for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss, including single interest insurance.

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

(7) Premiums [5] for credit life, accident, health, or loss of income insurance, written in connection with [6] a credit transaction.

(8) Premiums [7] for insurance against loss of, or damage to, property or against liability arising out of the ownership or use of property, written in connection with [8] a credit transaction.

(9) A discount for the purpose of inducing payment other than by use of credit.

(c) *Charges excluded from the finance charge.* The finance charge does not include the following types of charges:

(1) A charge for actual, unanticipated late payment, exceeding a credit limit, delinquency, default, or similar occurrence.

(2) A charge imposed by a financial institution for paying a check or similar instrument that overdraws or increases an overdraft in an account, unless the payment of the instrument and the imposition of the charge were previously agreed upon in writing.

(3) A fee charged for membership in a credit card plan.

(4) In connection with a transaction secured by real property, if they are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, or property survey;

(ii) Fees for preparing a deed, mortgage, settlement statement, or similar document;

(iii) Notary, appraisal, or credit report fees; and

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

(d) *Insurance.* (1) Premiums for credit life, accident, health, or loss of income insurance may be excluded from the finance charge if the following three conditions are met:

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

(ii) The premium [9] for the initial term of insurance coverage is disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall be disclosed. If the premium disclosed may increase, that fact also shall be stated.

(iii) The consumer signs an affirmative written statement indicating a desire for the insurance after receiving the disclosures specified in this provision. If there is more than one consumer to be insured, any one of them may sign the statement.

(2) Premiums for insurance against loss of, or damage to, the property securing the obligation, or against liability arising out of the ownership or use of that property [10] may be excluded from the finance charge if the following two conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice,[11] and this fact is disclosed.

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[3] An agricultural purpose includes the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. It also includes the acquisition of real property (including real property with a dwelling), personal property, and services, if the acquisition is used primarily in any of those activities.

[4] The amount to be included in the finance charge is the premium for coverage for the period of time that the creditor requires the insurance to be maintained.

[5] See footnote 4.

[6] A policy of insurance owned by the consumer and assigned to or otherwise made payable to the creditor to satisfy a requirement imposed by the creditor is not insurance "written in connection with" a credit transaction if the policy was not purchased for use in connection with that credit extension.

[7] See footnote 4.

[8] See footnote 6.

[9] For an open-end credit plan where the premium is computed on the outstanding balance, the unit cost of the premium may be used if the period is stated.

[10] This includes single interest insurance that functions like dual interest insurance if the insurer waives all right of subrogation against the consumer.

[11] A creditor's right to refuse to accept an insurer offered by the consumer, for reasonable cause, does not require inclusion of the premium in the finance charge.

(ii) If coverage may be obtained from or through the creditor, the premium [12] for the initial term of insurance coverage is disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall be disclosed. If the premium disclosed may increase, that fact also shall be stated.

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

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

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

(f) *Discounts.* A discount for the purpose of inducing payment for a purchase by cash, check, or similar means rather than by use of an open-end credit card account (whether or not a credit card is physically used) may be excluded from the finance charge [13] if the following three conditions are met:

(1) The discount does not exceed 5 percent [14] of the regular price [15] of the property or service.

(2) The discount is available to all prospective purchasers, whether or not they are cardholders, and this fact is clearly and conspicuously disclosed in the seller's place of business.[16]

(3) If an advertisement or telephone communication by which the creditor invites or accepts purchase orders states that consumers are allowed to pay for property or services by use of a credit card or its underlying account, the availability of the discount shall be clearly and conspicuously stated either in the advertisment or communication or before the transaction has been completed by use of the credit card or its underlying account. If a price other than the regular price is disclosed in an advertisment or communication, the fact that that price is not available to credit card purchasers also shall be disclosed.

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

Subpart B—Open-End Credit

§ 226.5 Disclosures.

(a) *General requirements.* (1) *Who must make disclosures to whom.* If the plan involves only one creditor, that creditor shall make the disclosures required by this section. Except as provided in paragraph (j) of this section, if the plan involves more than one creditor, only one creditor must make all the disclosures.

(ii) The disclosures shall be made to the consumer. If there is more than one consumer, the disclosures may be made to any one of the consumers who is primarily liable on the obligation. Where the right of rescission under § 226.9 is applicable, however, the disclosures shall be made to each person who has the right to rescind.

(2) *What disclosures must be made.* A creditor must give the initial disclosures required under paragrph (b) of this section and the periodic statment disclosures required under paragraph (c) of this section. A creditor must also follow the procedures described in § 226.7 if a consumer asserts an error under that section.

(3) *Time and form; general.* (i) The disclosures required by this subpart shall be made clearly and conspicuously in writing in a form that the consumer may keep. The disclosures shall be made at the time, in the format, and in the terminology required by the applicable paragraphs of this subpart. Appropriate identifying language may accompany required terminology. (For example, the rate applied to a balance on a daily basis may be described as the "daily periodic rate"; payments on a loan account may be described as "loan payments.") Pluralization of required terminology is permitted.

(ii) When the words "finance charge" and "annual percentage rate" are required to be disclosed together with a corresponding amount or percentage rate, those words shall be more conspicuous (for example, by use if capitalization, asterisks, bolder type, underlining; or a contrasting color) than any other required terminology. This rule does not apply to paragraph (c)(4) of this section and to § 226.10.

(4) *Initial disclosures; time and form.* (i) The creditor shall furnish the initial disclosure required by paragraph (b) of this section to the consumer before the first transaction is made under the plan.

(ii) These disclosures must be made together but can be made on one or more pages of an integrated document. The document may contain other material (such as the agreement, explanations, disclosures requied by state law or promotional material) as long as the additional material does not contradict or detract attention from the required disclosures.

(5) *Periodic statements; time and form.* (i) The disclosures required to be on or with a periodic statement should be made together; however, a periodic statement can consist of one or more pages. Additional material appearing on or with any periodic statement shall not contradict or detract attention from the required disclosures.

(ii) A periodic statement containing the disclosures required by paragraph (c) of this section shall be mailed or delivererd by the creditor to the consumer at least quarterly for each cycle at the end of which the account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. No periodic statement need be sent to any consumer whose account the creditor deems to be uncollectible. A creditor's following its standard procedures for uncollectible accounts shall be evidence that the creditor has deemed the account uncollectible.

(iii) The creditor shall mail or deliver the periodic statement at least 14 days priror to any date or the end of any time period required to be disclosed by paragraph (c)(11) of this section in order for the consumer to avoid the imposition of any finance or other charges. If the creditor fails to meet this requirement, no finance or other charges may be collected on the amount required to be paid to avoid the imposition of finance charges as provided in paragraph (c)(11) of this section. This time limitation shall not apply if the creditor has prevented, delayed, or hindered in meeting this requirement by an act of God, war, civil disorder, natural disaster, or strike.

(6) *Basis of disclosures and use of estimates.* (i) The creditor shall base the disclosures on the information known to it at the time disclosures are made. The disclosures shall be based on the assumption that the consumer will comply with the terms of the agreement.

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[12] See footnote 9.

[13] A discount tht is not a finance charge under this paragraph shall not be considered a finance charge or other charge for credit under any state law relating to usury, disclosure of information in connection with credit extensions, or charges permissible in connection with the extension with the extension or use or credit.

[14] If the discount is greater than 5 percent, the total amount of the discount shall be a finance charge.

[15] "Regular price" means (1) the tagged or posted price; or (2) the price charged for the property or service where payment is made by use of an open-end credit card account if either (i) no price is tagged or posted, or (ii) two prices are tagged or posted, one of which is charged where payment is made by use of an open-end credit card account and the other where payment is made by use of cash, check, or similar means. For the purpose of this definition, payment by check, draft, or similar instrument that may result in the debiting of a cardholder's open-end account shall not be considered payment payment made by use of that account.

[16] The availability of the discount may be limited on the basis of some other distinction such as certain types of property or services, certain outlets, or cash payments only, if the limitations are clearly and conspicuously disclosed.

The disclosures shall reflect the terms as actually agreed upon even if they differ from the written obligation (for example, a creditor-employer that offers a preferential employee rate cannot furnish the employee with a preprinted disclosure from reflecting the non-employee rate.)

(ii) If any information necessary to make an accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available to it and shall state clearly that the disclosure is an estimate.

(7) *Effect of subsequent events.* (i) If a disclosure is rendered inaccurate as a result of an event that occurs after delivery of the disclosures, the resulting inaccuracy is not a violation of this regulation.

(ii) If a disclosure is later rendered inaccurate, new disclosures may be required. The conditions for new disclosures are set forth in paragraph (i) of this section (Change in terms).

(iii) Whenever a term change renders a disclosure form inaccurate, an insert reflecting the new term may be used with the outdated disclosure form until the form supply is exhausted.

(b) *Opening new account; initial disclosure statement.* The creditor shall disclose to the consumer, in accordance with the timing and format requirements of paragraph (a) of this section and in terminology consistent with that in quotation marks in paragraph (c) of this section, each of the following items, to the extent applicable:

(1) *Finance charge.* The circumstances under which a finance charge will be imposed and an explanation of the method of determining the finance charge, as follows:

(i) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. When such a time period is provided, a creditor may, at its option and without disclosure, refrain from imposing finance charges even though payment is received after the time period's termination. If no such time period is provided, that fact shall be disclosed.

(ii) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[17] and the corresponding annual percentage rate (determined by multiplying the periodic rate by the number of periods in a year). If different periodic rates apply to different types of transactions (such as, purchases and cash advances), those periodic rates and their corresponding annual percentage rates together with the types of transaction to which they apply, must be disclosed.

(iii) An explanation of the method used to determine the balance on which the finance charge may be computed.[18] Where a balance was determined, for example, without first deducting all credits and payments made during the billing cycle, that fact shall be disclosed. (See Appendix A for model clauses.)

(iv) An explanation of how the amount of any finance charges will be determined.[19] This explanation shall indicate, for example, that the periodic rate will be applied to the balance, and shall describe how any other finance charges [20] will be determined.

(2) *Other charges.* An identification of any charges [21] other than finance charges that may be imposed as part of the plan, together with a disclosure of either the amounts of those charges or an explanation of how the amounts of those charges will be determined.

(3) *Security interests.* Where a security interest is or will be taken in goods charged to the account, a statement of that fact; where a security interest is or will be taken in property not charged to the account, a statement of that fact and an identification, by item or type, of the property that will serve as security.

(4) *Minimum payment.* The amount or method of computing the amount of any minimum periodic payment required by the creditor to be made for a particular interval, and an identification of that interval (for example, $50 per month; or 10% of the outstanding balance every two weeks).

(5) *Statement of billing rights.* A statement that is substantially similar [22] to the statement found in Appendix A concerning a consumer's right to withhold payments and to dispute transactions.

(c) *Periodic statements.* The creditor shall, at least quarterly and in accordance with the timing and format requirements of paragraph (a) of this section, furnish the consumer with a periodic statement that discloses to the consumer the following items, to the extent applicable:

(1) *Previous balance.* The outstanding account balance at the beginning of the billing cycle, using the term "previous balance." If the balance is a credit balance, that fact shall be disclosed. Where there is more than one type of transaction (such as purchases and cash advances), the creditor may show a previous balance for each type of transaction.

(2) *Identification of transactions.* An identification of each credit extension in accordance with paragraph (d) of this section.

(3) *Payments and credits.* The amount and date of crediting any payment or other credit (for example, a return, adjustment, or finance charge rebate) during the billing cycle, using the term "payment" or "credit," as applicable. The date need not be provided if a delay in crediting does not result in the imposition of any finance or other charges.

(4) *Periodic rates.* Each periodic rate, using the term "periodic rate," that may be used to compute the finance charge, the range of balances to which it is applicable,[23] and the corresponding annual percentage rate (determined by multiplying the periodic rate by the number of periods in a year). The words "corresponding annual percentage rate," "corresponding nominal annual percentage rate," "nominal annual percentage rate," or "annual percentage rate" may be used to describe the corresponding annual percentage rate. If different periodic rates apply to different types of transactions (such as, purchases and cash advances), those

[17] A creditor is not required to adjust a range of balances disclosure to reflect the balance below which only a minimum charge applies. (For example, if a minimum charge is imposed on balances of less than $10, the bottom limit of the range of balances may still be shown as $0).

[18] The explanation need not describe, however, the manner in which payments and other credits are allocated (for example, the fact that payments are applied first to finance charges, then to purchases, and then to cash advances need not be disclosed).

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

[20] Examples include: minimum, fixed, transaction, and activity charges; required insurance; appraisal, investigation, or credit report fees; or charges imposed in connection with a checking or similar account, such as the issuance, payment or handling of checks, or for account maintenance, to the extent they exceed the charges for a similar account without a credit feature.

[21] Examples include: charges for late payment; for providing documentary evidence of transactions requested under § 226.7 (Billing error resolution); for membership in an open-end credit plan; over-the-credit limit charges; and taxes or fees imposed only as a result of credit extensions. "Other charges" would not include, for example: premiums for voluntary credit life or disability insurance, amounts payable by a consumer for collection activity after default; or charges for documentary evidence of transactions supplied for income tax records.

[22] For example, descriptive terms or names that are appropriate to the creditor's program may be used ("the xyz credit union's monthly statement" instead of "your bill"); inappropriate provisions may be deleted (paragraph 7 may be deleted if no credit card is involved in the account); and modifications may be made to conform with plain English state laws.

[23] See footnotes 17 and 19.

periodic rates and their corresponding annual percentage rates, together with the types of transactions to which they apply, must be disclosed.

(5) *Other types of finance charges.* The amount or method of computing the amount of any other type of finance charge that may be imposed.[24]

(6) *Balance on which finance charge computed.* The dollar amount of each balance on which a component of the finance charge was computed (for example, a transaction charge or a periodic rate) for each type of transaction that is subject to a different periodic rate (for example, 1½% per month on purchases or 1% per month on cash advances) reflected on the statement and an explanation of how each balance was determined.[25] Where a balance was determined, for example, without first deducting all credits and payments made during the billing cycle, that fact and the amounts of such credits and payments shall be disclosed. (See Appendix A for model clauses.)

(7) *Amount of finance charge.* The amount of the finance charge debited or added to the account during the billing cycle, using the term "finance charge."[26] The components of the finance charge shall be itemized and identified to show the amounts due to the application of any periodic rates and the amount of any other type of finance charge. Where there is more than one periodic rate, the rates need not be separately itemized and identified. Where there are other types of finance charges, each charge must be individually itemized and identified.

(8) *Annual percentage rate.* When a finance charge is imposed during the billing cycle, the annual percentage rate determined under § 226.8, using the term "annual percentage rate." Where an annual percentage rate cannot be determined under § 226.8(c)(2)(iii)(A) (for example, where a minimum charge is imposed and the balance on which the finance charge is to be imposed is zero), the creditor shall disclose that fact.

(9) *Other charges.* The amounts of any charges other than finance charges (see footnote 21 for examples) debited to the account during the billing cycle. These charges must be itemized and identified.

(10) *Closing date of billing cycle; new balances.* The closing date of the billing cycle and the outstanding account balance on that date, using the term "new balance." If the new balance is a credit balance, that fact shall be disclosed. If the periodic statement reflects more than one type of transaction, the creditor may show a new balance for each type of transaction.

(11) *Free-ride period.* The date by which or the time period within which the new balance must be paid in order to avoid the imposition of finance charges. If only a portion of the new balance need be paid to avoid a finance charge, that amount must be disclosed. The creditor may, at its option and without disclosure, impose no finance charge when payment is received after the specified date or time period.

(12) *Address for notice of billing errors.* The address to be used for notice of billing errors, preceded by the caption "Send Inquiries To" or similar language. Alternatively, the address may be provided on the billing rights statement permitted by paragraph (e)(2) of this section.

(d) *Identification of transactions.* The creditor shall identify credit transactions on or with a periodic statement by furnishing the information required by this section, as applicable.[27]

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

(i) *Furnishing a copy of the credit document.* Each extension of sale credit for which an actual copy of the document (not a facsimile draft) evidencing the credit transaction accompanies the first periodic statement that reflects the transaction shall be identified by disclosing on or with the periodic statement at least the following information:[28]

(A) The amount of the transaction; and

(B) Either the date of the transaction or the date of debiting the transaction to the consumer's account, whichever the creditor chooses.

(ii) *Describing transaction if the creditor and seller are the same person or related persons.*[29] If the creditor and the seller are the same person or related persons, and if an actual copy of the document evidencing the credit transaction does not accompany the periodic statement, the transaction shall be identified by disclosing on or with the first periodic statement that reflects the transaction at least the following:

(A) The amount and date of the transaction; and

(B) A brief identification[30] of the property or services purchased.[31] Alternatively, the creditor may disclose a number or symbol that also appears on the document evidencing the transaction and given to the consumer. The number or symbol must reasonably identify that transaction with that creditor. If the creditor discloses a number or symbol and the consumer submits a notice of a billing error regarding the transaction, the creditor must comply with § 226.7, including correcting the account in accordance with § 226.7(e)(1). The creditor must also furnish the consumer with documentary evidence of the transaction, whether or not the consumer requests it, free of charge and within the time period allowed for resolution under § 226.7.

(iii) *Description if the creditor and seller are not the same person or related persons.* If the creditor and seller are not the same person or related persons, and

[24] See footnote 20.

[25] See footnote 18.

[26] Creditors that do not debit or add on finance charges during a billing cycle, but instead reflect the amount being allocated from each payment to finance charges, need not disclose any finance charges that may have accrued between the date of the last payment and the closing date under paragraph (c)(10) of this section.

[27] Note that under § 127(b)(2) of the act, failure to disclose the information required by this paragraph shall not be deemed a failure to comply with the act or the regulation if: (1) the creditor maintains procedures reasonably adapted to procure and provide such information; and (2) the creditor responds to and treats any inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.7(e)(1).

[28] The creditor complies with this requirement by disclosing the amount and date of a transaction as supplied by the seller. This does not relieve the creditor of its duty to investigate a notice of a billing error under § 226.7(g).

[29] For purposes of this section, franchised or licensed sellers of a creditor's product shall be considered related to the creditor. Sellers that assign or sell open-end consumer sales accounts to a creditor or arrange for credit under an open-end credit plan that allows the consumer to use the credit only in transactions with that seller shall also be considered related to the creditor. A person is not related to the creditor, however, simply because an agreement or contract exists under which the person is authorized to honor the creditor's credit card, or even though the person and the creditor have a corporate connection if that connection is not obvious from the names used by the person and the creditor. Transactions with third party sellers resulting from promotional material or solicitations mailed by the creditor may, at the creditor's option, be described as transactions in which the seller and the creditor are the same or related persons.

[30] Designations such as "merchandise" or "miscellaneous" are insufficient, but a reference to a department in a sales establishment that accurately conveys the identification of the types of property or services available in that department is sufficient. Identification may be made by a symbol relating to an identification list printed on the statement.

[31] An identification of property or services may be replaced by the seller's name and the location of the transaction where: (1) the creditor and the seller are the same person; (2) the creditor's open-end plan has fewer than 15,000 accounts; (3) the creditor provides all consumers with point-of-sale transaction documentation; and (4) the creditor responds to consumers' notices of billing errors about transactions in the manner described in this paragraph. If all transactions with the seller occur at one location, the seller's name and that location need not be repeated on the periodic statement for each transaction.

if an actual copy of the document evidencing the credit transaction does not accompany the periodic statement, the transaction shall be identified by disclosing on or with the first periodic statement that reflects the transaction at least the following:

(a) The amount and date of the transaction;[32]

(B) The seller's name;[33] and

(C) The address where the transaction took place[34] (city, and state or foreign country, using understandable and generally accepted abbreviations if the creditor desires).

(2) *Nonsale credit.* For nonsale credit (such as cash advance or overdraft loans), the following rules shall apply:

(i) *Furnishing a copy of the credit document.* Each extension of credit for which an actual copy of the document (not a facsimile draft) evidencing the credit transaction accompanies the first periodic statement reflecting the transaction shall be sufficiently identified if the document contains:

(A) The amount of the transaction; and

(B) Either the date of the transaction, the date of debiting the transaction to the consumer's account, or the date placed on the document by the consumer, if the consumer signed the document.

(ii) *Description of the transaction.* Each nonsale credit transaction for which an actual copy of the document evidencing the transaction and containing the information described in paragraph (d)(2)(i) of this section does not accompany the first periodic statement reflecting the transaction shall be identified by at least the following:

(A) A characterization of the transaction as a cash advance, loan, overdraft loan, or other appropriate designation (for example, any readily identifiable trade name for the program);

(B) The amount of the transaction; and

(C) The date of the transaction,[35] or the date appearing on the document evidencing the transaction, if the consumer signed the document. Alternatively, the debiting date may be disclosed. If this alternative is followed, however, and the consumer submits a notice of a billing error regarding the transaction, the creditor must comply with § 226.7, including correcting the account in accordance with § 226.7(e)(1). The creditor must also furnish the consumer with documentary evidence of the transaction, whether or not the consumer requests it, free of charge and within the resolution time period under § 226.7.

(3) *Transactions not billed in full.* A transaction that is billed in precomputed installments on more than one periodic statement[36] rather than billed in full on any single statement shall be identified by disclosing, on the first periodic statement on which any portion of the transaction is billed, the full amount of the transaction, and the date on which the transaction took place. Identifying disclosures other than the amount and date shall be made in accordance with the applicable provisions of this section.

(4) *Unavailable information.* If information required by paragraphs (d)(1) through (3) of this section is unavailable to the creditor despite the maintenance of procedures reasonably adapted to obtain such information, the following rules shall apply:

(i) If the required date is unknown, the debiting date shall be substituted (except that the debiting date need not be provided if an actual copy of the document evidencing the transaction is provided with the periodic statement.

(ii) The creditor shall disclose as much of the other required information as is available; and

(iii) If the consumer submits a notice of a billing error regarding the transaction, the creditor must comply with § 226.7, including correcting the account in accordance with § 226.7(e)(1). The creditor must also furnish the consumer with documentary evidence of the transaction, whether or not the consumer requests it, free of charge and within the resolution period under § 226.7.

(5) *Foreign transactions.* If a transaction does not occur in a state:

(i) The creditor may disclose the transaction's debiting date; and

(ii) The provisions of paragraph (d)(4) of this section shall apply whether or not the creditor maintains procedures reasonably adapted to obtain the information otherwise required by paragraph (d) of this section.

(e) *Routine furnishing of billing rights statement.* (1) *Annual statement.* the creditor shall mail or deliver during at least one billing cycle per calendar year the billing rights statement required by paragraph (b)(5) of this section at intervals of not less than six months or no more than 18 months to each consumer entitled to receive a periodic statement under paragraph (a)(5)(ii) of this section for that billing cycle.

(2) *Alternative summary statement.* As an alternative to the requirements of paragraph (e)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement that is substantially similar[37] to that found in Appendix A. If it is made on the periodic statement, it need not appear on a portion of the periodic statement that the consumer may keep.

(f) *Disclosures for supplemental credit devices.* If a creditor of an open-end credit plan, more than 30 days after mailing or delivering the initial disclosures required under paragraph (b) of this section, mails or delivers to a consumer already participating in the plan any credit device, other than a credit card, for use with the consumer's account,[38] that is unsolicited or whose finance charge terms differ from those previously disclosed the device shall be accompanied by the disclosures required by paragraph (b)(1) of this section. If the disclosures required by this paragraph appear with any other disclosures or material, the required disclosures must be highlighted.

(g) *Prompt crediting of payments.* Regardless of the date on which a payment is posted to a consumer's account, it shall be credited to the consumer's account as of the date it is received by the creditor[39] and no

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[32] See footnote 19. Also, for mail order transactions, the debiting date may be disclosed instead of the transaction date.

[33] Disclosure of a seller's name as it appears on the document evidencing the transaction (or a more complete spelling of the name if it is alphabetically abbreviated on the document evidencing the transaction) is sufficient.

[34] The creditor may omit the address or provide any suitable designation that assists the consumer in identifying the transaction when no meaningful address is readily available because the transaction (1) took place at a location that is not fixed (for example, aboard a public conveyance such as an airplane, in which case the flight number, "flight from [point of departure] to [destination]," or similar description is sufficient); or (2) took place in the consumer's home (in which case "consumer's home" or similar description is sufficient); or (3) was the result of a mail or telephone order (in which case "telephone order," "mail order," or similar description is sufficient).

[35] In cases in which an amount is debited to a consumer's open-end credit account under an overdraft checking plan, the debiting date is considered the transaction date for purposes of this paragraph.

[36] For example, for a $120 purchase, a creditor may agree to bill a consumer $40 a month for three months. Since there is only one "transaction" for the identification purposes of § 226.5(d), this paragraph requires that full identifying information must appear on or with the first periodic statement reflecting the $120 transaction. There are no specific identification requirements for the subsequent $40 debits.

[37] See footnote 22.

[38] Examples of a credit device for purposes of this paragraph are a blank check, payee-designated check, blank draft or order, or authorization form for issuance of a check. This paragraph does not apply to checks used in conjunction with a checking account, even through such checks may also activate a cash advance under an open-end credit plan.

[39] If payroll or another similar type of deduction is authorized in order to make the minimum periodic payment on an open-end credit account and the deduction is held in a share, escrow, or similar account until such time as the periodic payment amount is withdrawn and applied by the creditor to

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finance or other charge shall be imposed when payment is received on or before the time indicated by the creditor to avoid imposition of these charges, provided that:

(1) If a creditor fails to post a payment in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

(2) The creditor may specify on the periodic statement or on accompanying material that the consumer need not be able to keep reasonable requirements relating to the form, amount, manner, location, and time for receipt of payment; however,

(i) If no particular hour of the day is specified as the time by which payment must be received in order to be credited to the consumer's account as of that date, payments received before the close of business on any particular day must be credited as of that date;

(ii) If no location is specified for receipt of payment, then payment at any location where the creditor conducts business shall be credited as of the date the payment is received; and

(iii) If no particular manner of payment is specified, then payment by check, cash, money order, bank draft, or other similar instrument in properly negotiable form is proper manner of payment.

(3) If a creditor receives a payment that does not conform to one of the requirements the creditor has specified under this paragraph, the payment must be credited as soon as possible but no later than five business days from the date of receipt.

(4) If the creditor accepts payment at locations other than those specified under paragraph (g)(2) of this section, and if the possibility of delay is clearly disclosed to the consumer on the periodic statement or on material accompanying the statement, the consumer's account shall be credited as soon as possible but no later than five days from the date of receipt. The possibility of delay need not be stated on a portion of the periodic statement that the consumer may keep.

(5) If a delay in crediting a payment does not result in the imposition of any finance or other charges for the billing cycle in which the payment is received or a later billing cycle, the payment need not be credited as of the date of receipt but in any case must be credited as soon as possible.

(h) *Treatment of credit balances.* (1) Whenever a creditor receives a payment or other credit that exceeds by more than $1 the new balance (as defined in paragraph (c)(10)) to which the payment or other credit is to be applied, the creditor shall:

(i) Credit the consumer's account with an amount equal to the new balance and, as soon as possible but no later than five business days from receipt of the payment or other credit, refund the excess amount; or

(ii) Credit the consumer's account with the total amount of the payment or other credit. If the consumer requests in writing a refund of any credit balance of $1 or more, the creditor shall refund any such credit balance as soon as possible but no later than five business days from receipt of the consumer's request.

(2) The creditor shall make a good faith effort to refund to the consumer by cash, check, or money order any part of the amount of the credit balance remaining in the account for more than six months, but no further action is required in any case where the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number.

(i) *Change in terms.* (1) Whenever any term required to be disclosed under paragraph (b) of this section is changed, a written notice of the change shall be mailed or delivered to all consumers whose accounts may be affected by the change at least 15 days prior to the effective date of the change. No notice is required when the change involves late payment charges, charges for documentary evidence or over-the-limit charges. No notice is required when there is a change in the collateral requirements.

(2) No disclosure is necessary under this section if the change is a reduction in the minimum periodic payment, in any component of the finance charge or in any charge other than the finance charge, or if the change is the suspension of future credit privileges or the termination of an account or plan.

(3) Whenever open-end credit is converted to closed-end credit or closed-end credit is converted to open-end credit under the terms of a written agreement signed by the consumer, the creditor shall provide the disclosures required by § 226.11(f) (2), (3) and (4) and § 226.5(b) respectively. Where either an individual open-end credit account or an entire open-end credit plan is terminated but no written agreement converting a consumer's account to a closed-end loan is involved, the creditor shall continue to provide the periodic statements required by § 226.5(c) and to follow the error resolution procedures of § 226.7.

(4) A change in terms resulting directly or indirectly from the consumer's default or delinquency does not require any notice under this section unless the periodic rate or other finance charge is increased in which case the creditor shall notify the consumer of the change in writing but shall not be required to comply with the timing requirements of paragraph (g)(1) of this section.

(5) An agreement approved by a court does not require any disclosures.

(j) *Finance charge imposed at the time of transaction.* (1) Any person honoring a consumer's credit card, other than the creditor of the open-end credit account, who imposes a finance charge not excepted by § 226.4(f) (Discounts for payment in cash) shall, at the time of honoring a consumer's credit card, make the disclosures required under § 226.11(f) (2), (3) and(4). The annual percentage rate to be disclosed shall be determined by dividing the finance charge by the amount financed and multiplying the quotient (expressed as a percentage) by 12.

(2) The creditor of the open-end credit account, if other than the person honoring the consumer's credit card, shall have no responsibility for disclosures required by paragraph (j)(1) of this section and shall not separately consider any charge imposed under paragraph (j)(1) of this section for purposes of the disclosure requirements of paragraphs (b) and (c) of this section.

§ 226.6 Credit card transactions; special requirements

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

(1) In response to an oral or written request or application by that person;[40] or

(2) As a renewal of, or in substitution for, an accepted credit card [41],

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the open-end credit account, the payment may be credited as of the date it is withdrawn from the share, escrow, or similar account if the deductions (1) are not a condition of the extention of credit, and (2) are held in an account subject to withdrawal by the consumer.

[40] The card issuer may send more than one credit card to a person if the person so requests, and may imprint on a card(s) a name other than that of a person to whom the cards are sent, provided that the cards are sent only to the person making the request.

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

regardless of whether the card is issued by the same or a successor card issuer or whether the card has credit or other features the same as or different from the accepted credit card; provided, however, that each accepted card is replaced by no more than one renewal or substitute card. A card will not be considered to be issued in renewal of or in substitution for another card if it is not honored by any of the persons who honored the original card. (See also paragraph (h)(1) of this section.)

(b) *Liability of cardholder for unauthorized use.*[42] (1) *Limitation on amount of liability.* The liability of a cardholder for unauthorized use [43] of a credit card shall not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

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

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

(ii) The card issuer has provided, on the credit card or within two years preceding the unauthorized use, adequate notice [44] of the cardholder's maximum potential liability. The notice shall state that the cardholder's liability shall not exceed $50 (or any lesser amount); that the cardholder may give oral or written notification of loss, theft, or possible unauthorized use; and the telephone number and address of the person or office to receive the notification. It may include any additional information not inconsistent with the provisions of this section;

(iii) The card issuer has disclosed to the cardholder, on or with the periodic statement that immediately precedes the unauthorized use, the telephone number and address of the person or office to be notified of loss, theft, or possible unauthorized use; and

(iv) The card issuer has provided a means (such as by signature, photograph, fingerprint, or electronic or mechanical confirmation) to identify the person to whom the credit card was issued.

[42] See § 133(b) of the act for rules concerning burdens of proof in actions to enforce liability for use of credit cards.

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

[44] "Adequate notice" means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. (See Appendix A for model notice.)

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

(4) *Effect of other applicable law or agreement.* If applicable state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the cardholder's liability shall not exceed the lesser liability imposed under that law or agreement.

(5) *Business use of credit cards.* If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, nothing in this section prohibits the card issuer and the organization from agreeing to liability for unauthorized use without regard to the provisions of this section. However, liability for unauthorized use may be imposed on any employee of the organization only in accordance with this section.

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

(i) The cardholder has made a good faith attempt to obtain satisfactory resolution of the dispute relating to the transaction from the person honoring the credit card;

(ii) The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50; and

(iii) The transaction that gave rise to the assertion of the claim or defense by the cardholder occurred in the same state as the cardholder's current disignated address or, if not within the same state, within 100 miles from that address.

(2) *Exceptions.* The limitations stated in paragraphs (c)(1)(ii) and (iii) of this section shall not apply when the person honoring the credit card:

(i) Is the same person as the card issuer;

(ii) Is controlled by the card issuer directly or indirectly;

(iii) Is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer;

(iv) Controls the card issuer directly or indirectly;

(v) Is a franchised dealer in the card issuer's products or services; or

(vi) Has obtained the order for the transaction through a mail solicitation made by or participated in by the card issuer.

Simply honoring or indicating that a person honors a particular credit card is not any of the relationships described in paragraphs (c)(2)(i) through (vi).

(3) *Maximum amount of claims or defenses; determining credit outstanding.* The amount of the claim or defense that the cardholder may assert may not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. To determine the amount of credit outstanding for purposes of this section, payments and other credits shall be applied in the following order:

(i) Late charges in the order of entry to the account;

(ii) Fanance charges in the order of entry to the account; and

(iii) Any other debits in the order of entry to the account.

When more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

(4) *Types of transactions excluded.* This paragraph does not apply to the use of a credit card to obtain a cash advance unrelated to any specific credit sale item, nor to the use of a check guarantee card in connection with a check.

(5) *Adverse credit reports prohibited.* If, in accordance with this paragraph, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, and if the card issuer knows or has reason to know that the claim or defense exists, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered. Nothing in this paragraph prohibits a creditor from

reporting the disputed amount or account as being in dispute.

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

(2) This paragraph does not alter or affect the right of a card issuer acting under state or federal law to obtain or enforce a security interest in, or to attach or otherwise levy upon, funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally.

(3) This paragraph does not prohibit the cardholder and the card issuer from agreeing in writing to a plan under which the card issuer may periodically deduct all or a portion of the cardholder's credit card debt from a deposit account with the card issuer (subject to the limitations in § 226.7(d)(5)).

(4) Any waiver of the provisions of this paragraph is prohibited and void.

(e) *Prompt notification of returns and crediting of refunds.* (1) When any creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's open-end credit card account, that creditor shall, as soon as possible but in no case later than seven business days from the date the return is accepted or the debt is forgiven, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) Upon receipt of a credit statement, the card issuer shall credit the consumer's account with the amount of the refund as soon as possible but in no case later than three business days from receipt of the statement.

(3) If a creditor other than a card issuer routinely gives cash refunds to cash customers, the creditor must also give credit or cash refunds to credit card customers, unless it is disclosed at the time the transaction is consummated that credit or cash refunds for returns are not given. Nothing in this section shall be construed to require refunds for returns nor to prohibit refunds in kind.

(f) *Prohibited acts of card issuers.* No card issuer may, by contract or otherwise:

(1) Prohibit any person who honors a credit card from offering discounts of the type described in § 226.4(f) to all consumers to induce them to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer, its subsidiary, agent, or any other person, as a condition of participation in a credit card plan. This paragraph does not prohibit requiring maintenance of an account for clearing purposes where essential to the operation of the credit card plan and where no service charges or minimum balance requirements are imposed.

(g) *Prohibition of surcharges.* No creditor in any sale transaction may impose a surcharge.[45] This paragraph shall cease to be effective on February 27, 1981.

(h) *Relation to Electronic Fund Transfer Act and regulations.* (1) *Issuance.* (i) The act and this regulation govern:

(A) Issuance of credit cards;

(B) Addition of a credit feature to an accepted access device, as defined in 12 CFR 205.2(a), whether done when the accepted access device is renewed, or otherwise; and

(C) Issuance of credit cards that are also access devices, as defined in 12 CFR 205.2(a), except as provided in paragraph (h)(1)(ii)(C) of this section.

(ii) The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and 12 CFR Part 205 (Regulation E), which restrict the unsolicited issuance of access devices, govern:

(A) Issuance of access devices;

(B) Addition to an accepted credit card of the capability to initiate electronic fund transfers, whether done when the accepted credit card is renewed, or otherwise; and

(C) Issuance of access devices that permit credit extensions only under a preexisting agreement to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) *Liability.* (i) The act and this regulation govern a consumer's liability for unauthorized use of a credit card that is also an access device but that does not involve an electronic fund transfer.

(ii) The Electronic Fund Transfer Act and Regulation E govern a consumer's liability for an unauthorized electronic fund transfer that:

(A) Is initiated by use of an access device that is also a credit card; or

(B) Involves an extension of credit under an agreement to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(3) *Other rules.* Paragraphs (c) through (g) of this section, and the corresponding provisions of the act, apply to the use of credit cards that are also access devices to the extent appropriate under the terms of those paragraphs.

§ 226.7 Billing error resolution.

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

(1) An extension of credit that was not made to the consumer;

(2) An extension of credit that results from unauthorized use (as defined in footnote 43 to § 226.6);

(3) An extension of credit not identified on or with the periodic statment in accordance with the requirements of § 226.5(c)(2) and § 226.5(d);

(4) An extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed;[46]

(5) The creditor's failure to credit properly a consumer's payment or other credit to the account;

(6) A computational or similar error of an accounting nature made by the creditor relating to a credit extension;

(7) A consumer's request for any documentation required by § 226.5, or for additional information or clarification concerning an extension of credit. This includes any request for documentation, information, or clarification in order to assert an error within the meaning of paragraphs (a)(1) through (6) of this section.[47] It does not include a request for duplicate copies of documentation or other information that is made only for tax or other recordkeeping purposes.

[45] "Surcharge" means any amount added at the point of sale to the regular price (as defined in footnote 15) as a condition or consequence of payment being made by use of an open-end credit card account. For the purposes of this definition, payment by check, draft, or other negotiable instrument, or by electronic fund-transfer, that may result in the debiting of a cardholder's open-end account is not considered payment made by use of that account.

[46] This includes delivery of property or services different from that described in any agreement, delivery of the wrong quantity, late delivery, or delivery to the wrong location; but does not include any dispute relating to the quality of property or services.

[47] With regard to the type of error described in this paragraph, compliance with this section is achieved by transmitting the requested information, clarification, or documentation within the time limits set forth in paragraph (c)(2) of this section.

(b) *Notice of billing error.* A notice of a billing error is a written notice [48] from the consumer that

(1) Is received by the creditor at the address disclosed under § 226.5(c)(12) no later than 60 days after the creditor

(i) Transmitted a periodic statement on which the alleged error is first reflected; or

(ii) Transmitted additional information, clarification, or documentation described in paragraph (a)(7) of this section that was initially requested in accordance with paragraph (b)(1)(i) of this section;

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

(3) Except for errors described in paragraph (a)(7) of this section, indicates the consumer's belief, and the reasons for that belief, that an error exists in the consumer's account or is reflected on documentation required by § 226.5(c) and indicates to the extent possible the type, the date, and the amount of the error.

(c) *Time for resolution; general procedure.* After the creditor receives notice of a billing error, the creditor shall:

(1) Not later than 30 days after receiving the notice, mail or deliver written acknowledgment of receipt to the consumer's address, unless the appropriate actions required by paragraph (e) of this section are taken within the 30-day period; and

(2) Resolve the dispute not later than the end of the second complete billing cycle, but in no event later than 90 days from the date the creditor receives notice of a billing error, by following the applicable steps in paragraph (e) of this section. A creditor may make a temporary correction of the consumer's account pending investigation as long as the dispute is permanently resolved within the time limits set forth in this paragraph.

(d) *Rules pending resolution.* Until the dispute is resolved under paragraph (e) of this section, the following rules apply:

(1) *Consumer's right to withhold disputed amount.* The consumer may withold that portion of any required payment that the consumer believes is related to the amount in dispute.[49] When the disputed amount is only a part of the total amount of an item or bill, the consumer remains obligated to pay the undisputed portion. The creditor may collect any minimum periodic payment and finance or other charges on the undisputed portion.

(2) *Creditor's handling of disputed amount.* Nothing in this section prohibits a creditor from:

(i) Mailing or delivering a periodic statement that reflects a disputed amount (which includes finance or other charges related to the disputed amount), as long as the creditor indicates that payment of the disputed amount is not required pending the creditor's compliance with this section; or

(ii) Deducting any disputed amount from the maximum amount of credit available to the consumer.

(3) *Action to collect disputed amount.* The creditor shall resolve the dispute before taking any action to collect any portion of the amount indicated by the consumer as being a billing error or any finance or other charges on the disputed amount. If, despite the establishment by the creditor of practices reasonably adapted to ensure compliance with this paragraph, the creditor or its agent, within two business days after receiving a notice of a billing error, inadvertently takes action to collect, that action will not be considered a violation of this paragraph, as long as the creditor ceases any further collection activity and, as soon as possible, takes any action necessary to correct the collection action.

(4) *Adverse credit reports prohibited.* (i) After receiving notice of a billing error, the creditor may not directly or indirectly make or threaten to make, an adverse report to any person regarding the consumer's credit standing, including reporting the disputed amount or account as in dispute, because the consumer failed to pay either the amount specified as a billing error or any finance or other charges imposed on this amount. (This restriction does not prohibit a creditor from reporting the disputed amount or account as being in dispute or from making an adverse report on some other aspect of the consumer's account unrelated to the dispute.) If, despite maintenance of procedures reasonably adapted to ensure compliance with this paragraph, the creditor or its agent, within two business days after receiving a notice of a billing error, inadvertently takes action prohibited by this paragraph, that action will not be considered a violation of this paragraph as long as the creditor notifies as soon as possible all credit bureaus [50] and, to the extent possible, all other creditors, to which a report was made, that the disputed amount is not delinquent.

(ii) If a notice of a billing error is received by the creditor after the creditor has reported to a credit bureau that a disputed amount is delinquent, the creditor shall, within one billing cycle after receiving the notice, notify each such credit bureau in writing that the amount in dispute is not delinquent. For purposes of this paragraph, "in writing" includes transmission by computer communication.

(5) *Automatic debit of disputed amounts.* (i) In the case of credit card plans where the cardholder has agreed to permit the card issuer to pay periodically the cardholder's indebtedness by deducting the appropriate amount of the cardholder's deposit account held by the card issuer, if the card issuer receives notice of a billing error within 16 days from the date of mailing or delivery of the periodic statement on which the suspected billing error first appears, the card issuer shall:

(A) Prevent the automatic debiting of any disputed amount if receipt of the notice precedes the automatic debiting of the cardholder's account, or

(B) As soon as possible, but in no case more than two business days after recipt of the notice, restore to the cardholder's deposit account any portion of the disputed amount that was previously deducted, if receipt of the notice follows the automatic debiting of the cardholder's account for any disputed amount.

(ii) Nothing in paragraphs (d)(5)(i)(A) and (B) of this section shall limit the cardholder's right to dispute an amount believed to be in error within 60 days of the mailing or delivery of the statement on which the billing error first appears, as otherwise provided in this section.

(6) *Acceleration of debt; closing of accounts.* A creditor may not, prior to complying with the resolution procedures of pragraphs (c), (d), (e), and (f) of this section, accelerate the consumer's entire debt or restrict or close an account about which the consumer has provided notice of a billing error solely because of the consumer's refusal or failure to pay the amount indicated to be in error.

(e) *Procedures after creditor determines that a billing error occurred.* If the creditor determines that a billing error occurred, it shall as soon as

[48] The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by § 226.5(b)(5) and § 226.5(e)(2).

[49] The amount in dispute is the amount of the transaction or charge being questioned by the consumer, even though the inquiry itself might not concern a dollar figure, but rather might concern some other description of the transaction, such as the date or the seller's name.

[50] For purposes of this section, a credit bureau is any person in the business of collecting and disseminating information relating to the creditworthiness of borrowers.

possible but no later than the time limits set forth in paragraph (c)(2) of this section:

(1) Correct the error including crediting the consumer's account with any finance or other charges imposed as a result of the error; and.

(2) Mail or deliver a notice of the corrections to the consumer. This requirement may be satisfied by a notice on a periodic statement that is mailed within the time limits in paragraph (c)(2) of this section and that clearly identifies the correction to the consumer's account.

(f) *Procedures after creditor determines no billing error occurred.* If, after conducting a reasonable investigation, the creditor determines that no billing error occurred or that an error occurred in a different manner or amount from that described by the consumer, the creditor shall as soon as possible but no later than the time limits set forth in paragraph (c)(2) of this section:

(1) Mail or deliver an explanation to the consumer, setting forth the reasons for the creditor's belief that the consumer's assertion of a billing error was incorrect in whole or in part;

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

(3) Where a differing error occurred, if applicable, correct the error including crediting the consumer's account with any finance or other charges imposed as a result of the differing error.

(g) *Special investigation rules.* (1) If the consumer submits a notice of a billing error involving the delivery of property or services, a creditor shall not deny the assertion unless it determines, after having conducted a reasonable investigation, that the property or services were delivered or otherwise sent as agreed and provides the consumer with a written explanation of its determination.

(2) If the consumer asserts in a notice of billing error that information appearing on a periodic statement is incorrect because the person honoring the card has made an incorrect report to the card issuer, the card issuer shall not deny the assertion unless it determines, after having conducted a reasonable investigation, that the information was correct and provides the consumer with a written explanation of its determination.

(h) *Creditor's rights and duties after resolution.* If, after resolving the error under paragraphs (e), (f) and (g) of this section, the creditor determines that the consumer still owes all or part of the disputed amount, the creditor:

(1) Shall promptly notify the consumer in writing of that portion of the disputed amount that the consumer owes and when it is due. In those cases where the creditor has determined that a billing error occurred, if the creditor allows a free-ride period for payment of undisputed transactions of the same type, the creditor shall allow the same period or 10 days (whichever is longer) after delivering the notification for the consumer to pay the amount before imposing any additional finance or other charges on the disputed amount.

(2) May report as delinquent any disputed amount (including any finance or other charges imposed on that amount), providing the amount remains unpaid after the creditor has:

(i) Complied with all of the requirements of this section and,

(ii) Allowed the greater of 10 days or any free-ride period that the creditor customarily or by agreement permits for the consumer to pay.

(3) May not report to any third party that the disputed amount is delinquent (or that the account is delinquent because of the disputed amount) if, within the time allowed for payment set forth in paragraph (h)(2) of this section, the creditor receives a further notice from the consumer that any portion of a billing error resolved under this section is still in dispute, unless the creditor also:

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

(ii) Mails or delivers to the consumer at the same time the report is made, a written notice of the name and address of each party to whom the creditor is reporting information concerning the disputed amount or account; and

(iii) Promptly reports in writing to these third parties the subsequent resolution of the reported delinquency. For purposes of this paragraph, "in writing" includes transmission by computer communication.

(i) *Withdrawal of billing error notice.* The creditor need not comply with the requirements of paragraphs (c) through (h) of this section if the consumer discovers that no error occurred and voluntarily withdraws the notice of a billing error.

(j) *Reassertion of error.* A creditor that has fully complied with the requirements of this section has no further responsibilities under this section if the consumer subsequently reasserts the same error, regardless of the manner in which it is reasserted. This paragraph does not preclude the assertion of an error as defined in paragraphs (a)(1) through (6) of this section following the assertion of an error as described in paragraph (a)(7) of this section regarding the same transaction.

(k) *Forfeiture penalty.* (1) Any creditor that fails to comply with the requirements of this section forfeits any right to collect from the consumer the amount indicated by the consumer to be a billing error, whether or not the amount is in fact in error, and any finance or other charge imposed on this amount, provided that the amount forfeited shall not exceed $50 for each asserted billing error. Where the creditor loses the right to collect the amount from the consumer for failure to follow the requirements of this section, if the consumer nevertheless pays or has paid the amount to the creditor, the creditor must either credit the amount to the consumer's account or refund the amount to the consumer. In no case shall a creditor forfeit any amount for an error in a total figure or subtotal figure reflected on a statement that is caused solely by an error in another item that is the subject of a dispute, nor shall a creditor suffer any forfeiture more than once for any item or transaction that may appear on a periodic statement.

(2) Nothing in this subsection shall be construed to limit a consumer's right to recover under § 130 of the act.

(l) *Exceptions to the general rule.* This section does not apply to closed-end credit, whether or not a periodic statement is mailed or delivered, unless it is consumer credit extended on an account by use of a credit card.

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

§ 226.8 Determination of annual percentage rate.

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

(b) *Annual percentage rate for initial disclosures and for advertising purposes.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate to be disclosed for purposes of § 226.5(b)(1)(ii) before opening an account and for advertising purposes under § 226.10 shall be computed by multiplying each periodic rate by the number of periods in a year.

(c) *Annual percentage rate for periodic statements.* (1) The annual percentage rate to be disclosed for purposes of § 226.5(c)(4) shall be computed by multiplying each periodic rate by the number of periods in a year.

(2) The annual percentage rate to be disclosed for purposes of § 226.5(c)(7) shall be determined as follows:

(i) Where the finance charge is determined solely by applying one or more periodic rates, the annual percentage rate shall be determined, at the creditor's option, either:

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

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

(ii) Where the creditor imposes all periodic finance charges in amounts based on specified ranges or brackets of balances, the periodic rate shall be determined by dividing the amount of the finance charge for the period by the amount of the median balance within the range or bracket of balances to which it is applicable, and the annual percentage rate shall be determined by multiplying that periodic rate (expressed as a percentage) by the number of periods in a year. If, however, the annual percentage rate determined on the median balance understates the annual percentage rate determined on the lowest balance in that range or bracket by more than 8 percent of the rate on the lowest balance, then the annual percentage rate for that range or bracket shall be computed upon any balance lower than the median balance within that range so that any understatement will not exceed 8 per cent of the rate on the lowest balance within that range or bracket of balances. Nothing in this paragraph prevents a creditor who uses ranges or brackets from also exercising the options referred to in paragraph (c)(2)(i) of this section.

(iii)(A) Except as provided in paragraphs (c)(2)(iii)(B) and (c)(2)(iii)(C) of this section, where the finance charge imposed during the billing cycle includes a minimum, fixed, or other charge not due to the application of a periodic rate, the annual percentage rate shall be determined by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which applicable [51] and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(B) Where the finance charge imposed during the billing cycle includes a charge relating to a specific transaction, the annual percentage rate shall be determined by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year, [52] except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.

(C) Where the finance charge imposed during the billing cycle includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the annual percentage rate may be determined, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2)(iii)(A) and (B) of this section. [53]

(d) *Calculations where daily periodic rate applied.* In any open-end credit account to which the provisions of paragraphs (c)(2)(i)(B) or (c)(2)(iii)(A) of this section apply where all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined (1) by dividing the total finance charge by the average of daily balances and multiplying the quotient by the number of billing cycles in a year, or alternatively (2) by dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

§ 226.9 Right of rescission.

(a) *Consumer's right to rescind.* (1) In an open-end credit plan where a security interest is retained or acquired in property used as the consumer's principal dwelling, except for exemptions described in paragraph (f) of this section, the consumer whose ownership interest is subject to the security interest shall have the right to rescind.

(i) Each transaction made under the plan; or, alternatively,

(ii) As follows: [54]

(A) The plan when the plan is opened;

(B) A security interest when added to secure an existing open-end credit plan.

(C) The increase when the credit limit on the plan is increased.

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

(3) The consumer may exercise the right to rescind until midnight of the third business day following the later of either:

(i) The occurrence described in paragraph (a)(1) of this section which gave rise to the right of rescission, or

(ii) Delivery of the notice required by paragraph (b) of this section together with a copy of the material disclosures [55] required by § 226.5(b).

(4) If the required notice and material disclosures are not delivered in the manner specified in paragraph (a)(3) of this section, the right to rescind shall expire the earlier of three years after the occurrence giving rise to the right of rescission or the date of transfer of the property. If an administrative proceeding as described in § 125(f) of the Act is instituted, the right to rescind may expire one year following the conclusion of the proceeding, or the later of judicial review or period of review of that proceeding.

(b) *Notice of right to rescind.* In any occurrence described in paragraph (a)(1) of this section, a creditor shall clearly and conspicuously disclose on a separate statement (see Appendix A for model notices):

(1) That a security interest is retained or acquired in property used as the consumer's principal dwelling;

(2) That the consumer has the right to rescind as described in paragraph (a)(1) of this section;

(3) How the right may be exercised, with a form for that purpose, designating

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[51] If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section. See § 226.5(c)(8) for disclosure requirement.

[52] See Appendix B regarding determining the denominator of the fraction under this paragraph.

[53] See footnote 51.

[54] The limitations on the consumer's right to rescind under this section shall cease to be effective three years after the effective date of the Truth in Lending Simplification and Reform Act. Upon expiration, the *consumer shall have the right to* rescind each advance under open-end plans secured by the consumer's principal dwelling.

[55] For purposes of this section, the term "material disclosures" means the required disclosures of the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, and the minimum payment requirements.

the address of the creditor's place of business where the form may be sent; and

(4) The effects of rescission.

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

(d) *Effects of rescission.* A consumer who rescinds shall not be liable for any amounts, including any finance charge, and the security interest giving rise to the right of rescission shall be void. Within 20 days after receipt of a notice of rescission, the creditor shall return any money or property given to any party by the consumer (including any downpayment or other payments) and shall take any action necessary to reflect the termination of the security interest. If the creditor has delivered any money or property, the consumer may retain possession of it until the performance of the creditor's obligations under this paragraph. The consumer shall at that time offer to return the money or property; if return of the property in kind would be impracticable or inequitable, the consumer shall offer its reasonable value. At the consumer's option, the offer may be made at the location of the property or at the consumer's residence. If the creditor does not take possession of the money or property within 20 days after the consumer's offer to return it, the consumer may keep it without further obligation. These procedures may be modified by court order.

(e) *Consumer's waiver of right to rescind.* If a consumer determines that, because of a financial emergency, a delay of three business days in the creditor's performance would endanger the welfare, health, or safety of natural persons or risk damage to property that the consumer owns or for which the consumer is responsible, the consumer may modify or waive the right to rescind by giving the creditor a personal; written statement, dated and signed by all consumers entitled to rescind. The statement must describe the emergency and must modify or waive the right to rescind. The use of printed forms is prohibited.

(f) *Exemptions.* The right to rescind does not apply to:

(1) A residential mortgage transaction.

(2) An open-end credit plan in which a state or federal agency is the creditor.

(3) Subordination of a security interest, whether or not the open-end credit plan in which the security interest was originally created was exempt from the right of rescission.

§ 226.10 Advertising.

(a) *Generally available terms; accuracy of advertising.* (1) If an advertisement for open-end credit states specific credit terms, it shall state only those terms that the creditor generally arranges or offers.

(2) No advertisement for open-end credit shall contain information that is inaccurate or misleading or that otherwise misrepresents the credit offered.

(b) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under § 226.5(b) is set forth in or otherwise determinable from an advertisement, that advertisement shall also clearly and conspicuously set forth any minimum, fixed, transaction, activity or similar charge which could be imposed, and any periodic rate which could be applied expressed as a corresponding annual percentage rate as determined under § 226.8(b).

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

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

(ii) Any statement of credit terms, other than the cash price, appearing anywhere else in the catalog or advertisement clearly refers to the page on which the table or schedule begins.

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

(d) *Use of annual percentage rate in oral disclosures.* In an oral response to an inquiry by a consumer about the cost of open-end credit, only the corresponding annual percentage rate, as determined under § 226.8(b), shall be stated, except that if the corresponding annual percentage rate is stated, the periodic rate may also be stated.

Subpart C—Closed-End Credit

§ 226.11 Disclosures.

(a) *Who must make disclosures to whom.* (1) If a transaction involves only one creditor, that creditor shall make the disclosures required by this section. If a transaction involves more than one creditor, only one creditor shall make all of the disclosures.

(2) The disclosures shall be made to the consumer. If there is more than one consumer, the disclosures may be made to any one of the consumers who is primarily liable on the obligation. If a transaction is rescindable under § 226.13, however, the disclosures shall be made to each consumer who has the right to rescind.

(b) *What disclosures must be made.* (1) The creditor initially may make either the transactional disclosures under paragraph (f) or the alternate shopping disclosures under paragraph (h) of this section. For a residential mortgage transaction described in paragraph (g), however, the creditor shall make transactional disclosures in accordance with paragraphs (f) and (g) of this section.

(2) If the disclosures made are later rendered inaccurate, new disclosures may be required. The conditions for new disclosures are set forth in paragraph (o) of this section.

(c) *Timing and form of disclosures.* (1) Transactional disclosures shall be made before consummation of the transaction. In certain residential mortgage transactions, however, special timing requirements are set forth in paragraph (g) of this section. In certain transactions involving mail or telephone orders or a series of sales, the timing of the disclosures may be delayed in accordance with paragraphs (k) and (l) of this section.

(2) Alternate shopping disclosures shall be made at the time the consumer applies to the creditor for credit or as soon after application as reasonably possible, but never later than consummation.

(3) The disclosures shall be made clearly and conspicuously in writing in a form that the consumer may keep, either on the credit contract or on a separate document. Except for the disclosure of the creditor's identity under paragraph (f)(1) or (h)(2)(i) and any itemization of the amount financed under paragraph (f)(2)(ii) of this section, the disclosures shall be grouped together beginning on the front of the document and shall be segregated from everything else. The disclosures may include an acknowledgement of receipt, but shall not contain any other information not directly related to the disclosures required under this section.

(4) Where the words "annual percentage rate" and "finance charge" are required to be disclosed together with a corresponding amount or percentage rate, those words shall be

more conspicuous than any other disclosure Information relating to the creditor's identity is not governed by this rule

(d) *Basis of disclosures and use of estimates* (1) Except for the alternate shopping disclosures. the creditor shall base the disclosures on the information known to it at the time disclosures are made The disclosures shall be based on the assumption that the consumer will comply with the terms of the agreement. The disclosures shall reflect the repayment arrangement actually agreed upon (even if it differs from the written obligation), unless it involves payroll deductions that may be terminated voluntarily by the consumer without any adverse consequence, and the consumer thereafter may pay according to the terms of the written obligation.

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

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

(i) The fact that payments must be collected in whole cents.

(ii) The fact that dates of scheduled payments and advances must be changed because the scheduled date falls on a Saturday, Sunday, or holiday.

(iii) The fact that months have different numbers of days.

(iv) The occurrence of leap year.

(4)(i) The creditor may disregard an irregular final payment or portion of a final payment that results from an irregular first period within the limits described below and may treat the irregular first period as if it were regular:

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

(B) For transactions in which the term is at least one year and less than ten years, a first period not more than 11 days shorter or 21 days longer than a regular period.

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

(ii) For purposes of paragraph (d)(4)(i) of this section, the "first period" is the period from the date on which the finance charge begins to be earned to the date of the first payment; the "term" is the period from the date on which the finance charge begins to be earned to the date of the final payment; and the "regular period" is the most common interval between payments in the transaction. In transactions involving regular periods that are monthly, semi-monthly. or multiples of a month, the length of the irregular and regular periods may be calculated on the basis of either the actual number of elapsed days or an assumed 30-day month. In other transactions. the length of the periods shall be based on the actual number of days

(5) If an obligation is payable on demand. the creditor shall make the disclosures based on an assumed maturity of one year If. however, there is an alternate maturity date or principal reduction agreement, the disclosures shall be based on that feature.

(6) A single obligation shall not be disclosed as two or more transactions; two or more obligations shall not be disclosed as a single transaction. A credit sale transaction where the downpayment is financed separately may be treated as two transactions.

(e) *Effect of subsequent events.* (1) If a disclosure is rendered inaccurate as a result of an event that occurs after delivery of the disclosures, the resulting inaccuracy is not a violation of this regulation.

(2) If the event occurs prior to consummation and transactional disclosures were made, the creditor shall disclose the changed term before consummation. In certain residential mortgage transactions, an entire new set of transactional disclosures may be required, as described in paragraph (g) of this section.

(3) If the event occurs prior to consummation and alternate shopping disclosures were made, the determination of whether new transactional disclosures are required is governed by paragraph (h)(3) of this section.

(4) If the event occurs after consummation, the determination of whether new disclosures are required is governed by paragraph (i) of this section.

(f) *Transactional disclosures.* For each transaction, the creditor shall disclose the items in paragraphs (f)(1) through (f)(16) of this section, to the extent applicable.[56] The disclosure of each item shall include a brief identification and the amount where applicable.

(1) The identity of the creditor making the disclosures.

(2)(i) The "amount financed," using that term, accompanied by a descriptive explanation such as "the amount of credit provided to you or on your behalf," which shall be computed by:

(A) Taking the principal amount of the loan or the cash price less downpayment (which includes any trade-in);

(B) Adding any amounts that are not part of the finance charge or of the amount described in paragraph (f)(2)(i)(A) of this section and that are financed by the consumer, including the cost of any items excluded from the finance charge under § 226.4; and

(C) Deducting any prepaid finance charge (any finance charge paid before or at consummation or withheld from the proceeds of the credit).

(ii) A statement that the consumer has the right to receive a written itemization of the amount financed shall accompany the disclosure of the amount financed. The statement shall include spaces to be initialed by the consumer to indicate whether or not a written itemization is desired. If the consumer indicates a desire for the itemization, the creditor shall:

(A) Disclose by identity and amount, as applicable, the cash price, cash downpayment, trade-in, prepaid finance charge as defined in paragraph (f)(2)(i)(C) of this section, amount paid to the consumer, amount credited to the consumer's account with the creditor, and each amount paid to another person by the creditor on the consumer's behalf;

(B) Provide the itemization at the same time that the other disclosures required by this paragraph are made or as soon thereafter as practicable; and

(C) Furnish the itemization separately from the disclosures that are grouped together and segregated in accordance with paragraph (c)(3) of this section.

(3) The "finance charge," accompanied by the descriptive explanation "the dollar amount the credit will cost you," using those terms.

(4) The "annual percentage rate," accompanied by the descriptive explanation "the cost of your credit as a yearly rate," using those terms.

(5) If the annual percentage rate may increase,[57] the following three additional disclosures:

(i) The conditions under which the annual percentage rate may increase (including identification of any index to which the rate is tied).

(ii) The limitations,[58] if any, on the increase (which may be expressed as a percentage rate other than an annual percentage rate).

[56] In some instances, certain disclosures are not required. See paragraph (f)(17) of this section.

[57] This provision does not apply to any rate increase due to delinquency (including late payment), default, assumption, or transfer of collateral.

[58] This need not include limitations prescribed under state usury or rate ceiling laws.

(iii) The manner in which any increase would occur (such as an increase in the amount or number of payments).

(6) The number, amounts,[59] and timing of payments scheduled to repay the obligation.

(7) The "total of payments,"[60] using that term, accompanied by a descriptive explanation such as "the amount you will pay when you make all payments as scheduled."

(8) If the obligation is payable on demand, that fact shall be disclosed. If the disclosures are based on an assumed maturity of one year as provided in paragraph (d)(5) of this section, that assumption also shall be disclosed.

(9) In a credit sale, the "total sale price," using that term, accompanied by a descriptive explanation that includes the amount of any downpayment such as "the total price of your purchase on credit, including your downpayment of $——." The total sale price is the sum of the cash price, the items described in paragraph (f)(2)(i)(B), and the finance charge disclosed under paragraph (f)(3) of this section.

(10)(i) If the obligation involves a precomputed finance charge, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full of the obligation, pursuant to acceleration or otherwise.

(ii) If the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating if a penalty will be imposed in those same circumstances;

(iii) Both statements, if appropriate.

(11) Any dollar or percentage charge that may be imposed before maturity on account of a late payment, other than a deferral or extension charge.

(12) The fact that the creditor has or will acquire a security interest in either the property purchased as part of the transaction, or other property identified by item or type. If the security interest relates to after-acquired property, that fact also shall be disclosed.

(13) The disclosure required by § 226.4(d) in order to exclude certain insurance premiums from the finance charge.

(14) The disclosure required by § 226.4(e) in order to exclude certain charges from the finance charge.

(15) A statement that the consumer should refer to the appropriate contract document for any information it provides about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties.

(16) In a residential mortgage transaction, a statement whether or not a subsequent purchaser or assignee of the consumer may assume the obligation on its original terms.

(17) In the following transactions, certain disclosures are not required:

(i) For any transaction involving an interim credit extension under a student credit guarantee program, the creditor need not disclose the finance charge under paragraph (f)(3), the schedule of payments under paragraph (f)(6), the total of payments under paragraph (f)(7), or the total sale price under paragraph (f)(9) of this section. Before the final obligation or repayment schedule is agreed upon, the creditor shall make all applicable disclosures, except for the total sale price and downpayment under paragraph (f)(9) of this section.

(ii) For any transaction involving a finance chart of $5 or less on an amount financed of $75 or less, or a finance charge of $7.50 or less on an amount financed of more than $75, the creditor need not disclose the annual percentage rate under paragraph (f)(4) of this section.

(iii) For any transaction involving a single payment, the creditor need not disclose the total of payments under paragraph (f)(7) of this section.

(g) *Special rule for certain residential mortgage transactions.* (1) In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (Title 12, §§ 2601 through 2617 of the United States Code), the transactional disclosures required under paragraph (f) of this section shall be made before consummation or shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier. The creditor shall make good faith estimates of the required disclosures.

(2) If the annual percentage rate in the consummated transaction is more than ⅛th of 1 percentage point above or below the annual percentage rate disclosed under paragraph (f)(4) of this section, a complete set of transactional disclosures shall be made not later than consummation or settlement.

(h) *Alternate shopping disclosures.* (1) Subject to the requirements of this paragraph, the creditor may make the disclosures listed in paragraph (h)(2) instead of the transactional disclosures described in paragraph (f) of this section. In addition to making these disclosures to the consumer, the creditor shall make copies of the disclosures readily available to the public during normal business hours at each place of business open to the public where it accepts applications for closed-end credit.

(2) The creditor shall disclose the items in paragraphs (h)(2)(i) through (h)(2)(xiii), to the extent applicable.[61] The disclosure of each item shall include a brief identification and the amount where applicable. The creditor shall base its disclosures on representative amounts and terms of credit that it customarily offers.

(i) The identity of the creditor making the disclosures.

(ii) The "amount financed," using that term, accompanied by a descriptive explanation such as "the amount of credit provided to you or on your behalf," as well as a statement that the consumer has the right to receive a written itemization of the amount financed before consummation if it is requested in writing. The amount financed shall be computed by:

(A) Taking the principal amount of the loan or the cash price less downpayment (which includes any trade-in);

(B) Adding any amounts that are not part of the finance charge or of the amount described in paragraph (h)(2)(ii)(A) of this section and that are financed by the consumer, including the cost of any items excluded from the finance charge under § 226.4; and

(C) Deducting any prepaid finance charge (any finance charge to be paid before or at consummation or withheld from the proceeds of the credit).

(iii) The "finance charge," accompanied by the descriptive explanation "the dollar amount the credit will cost you," using those terms. In addition, the creditor shall state whether any portion of the finance charge is expected to be paid before or at consummation.

(iv) The "annual percentage rate," accompanied by the descriptive explanation "the cost of your credit as a yearly rate," using those terms.

[59] If the amount of any payment in a series is not more than 5 percent larger than the smallest payment in that series, the creditor may treat all payments in the series as equal by disclosing the largest payment amount, labeled as an estimate. This rule governs only the disclosure of payment amounts; it does not affect the disclosure of the finance charge under paragraph (f)(3) of this section or the determination of the annual percentage rate under § 226.12.

[60] If the rule in footnote 59 is used, the total of payments shall reflect the payment amounts disclosed and shall be labeled as an estimate.

[61] In some instances, certain disclosures are not necessary. See paragraph (h)(2)(xiv) of this section.

(v) If the annual percentage rate may increase,[62] the following three additional disclosures:

(A) The conditions under which the annual percentage rate may increase (including identification of any index to which the rate is tied).

(B) The limitations,[63] if any, on the increase (which may be expressed as a percentage rate other than an annual percentage rate).

(C) The manner in which any increase would occur (such as an increase in the amount or number of payments).

(vi) The number, amounts,[64] and timing of payments scheduled to repay the obligation.

(vii) The "total of payments,"[65] using that term, accompanied by a descriptive explanation such as "the amount you will pay when you make all payments as scheduled."

(viii) If the obligation is payable on demand, that fact shall be disclosed. If the disclosures are based on an assumed maturity of one year as provided in paragraph (d)(5) of this section, that assumption shall also be disclosed.

(ix) In a credit sale, a statement that the "total sale price," using that term, equals the total of payments plus any downpayment and trade-in.

(x)(A) If the obligation involves a precomputed finance charge, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full of the obligation, pursuant to acceleration or otherwise.

(B) If the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating if a penalty will be imposed in those same circumstances.

(C) Both statements, if appropriate.

(xi) Any dollar or percentage charge that may be imposed before maturity on account of a late payment, other than a deferral or extension charge.

(xii) The fact that the creditor will acquire a security interest in either the property to be purchased as part of the transaction, or other property identified by item or type. If the security interest will relate to after-acquired property, that fact shall be disclosed.

(xiii) A statement that the consumer should refer to the appropriate contract document for any information it provides about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties.

(xiv) In the following transactions, certain disclosures are not required:

(A) For any transaction involving an interim credit extension under a student credit guarantee program, the creditor need not disclose the finance charge under paragraph (h)(2)(iii), the schedule of payments under paragraph (h)(2)(vi), the total of payments under paragraph (h)(2)(vii), or the total sale price under paragraph (h)(2)(ix) of this section. Before the final obligation or repayment schedule is agreed upon, the creditor shall make all applicable transactional disclosures.

(B) For any transaction involving a finance charge of $5 or less on an amount financed of $75 or less, or a finance charge of $7.50 or less on an amount financed of more than $75, the creditor need not disclose the annual percentage rate under paragraph (h)(2)(iv) of this section.

(C) For any transaction involving a single payment, the creditor need not disclose the total of payments under paragraph (h)(2)(vii) of this section.

(3) Unless each of the following conditions is met, the creditor shall make the transactional disclosures required by paragraph (f) of this section before consummation:

(i) The actual amount financed is within 10 percent of the disclosed amount financed.

(ii) The actual annual percentage rate is within 1/8 of 1 percent above or below the disclosed annual percentage rate.

(iii) The actual number and timing of payments are the same as the disclosed number and timing of the payments, disregarding any irregular first payment period.

(iv) The provisions of § 226.4(d) are complied with if credit life, accident, health, or loss of income insurance or property insurance is written in connection with the transaction and the premiums are excluded from the finance charge.

(v) A written itemization of the actual amount financed is provided to the customer, if a request in writing has been made. Such an itemization shall disclose by identity and amount, as applicable, the cash price, cash downpayment, trade-in, prepaid finance charge as defined in paragraph (h)(2)(ii)(C) of this section, amount paid to the consumer, amount credited to the consumer's account with the creditor, and each amount paid to another person by the creditor on the consumer's behalf.

(i) *Refinancing—new disclosures.* (1) Except as provided in this paragraph, a refinancing occurs when the creditor and the consumer agree to change the terms of an existing obligation previously disclosed under this section. A refinancing is a new transaction requiring new transactional disclosures under paragraph (f) of this section. The creditor shall include in the new finance charge any unearned portion of the old finance charge that is not credited to the existing obligation.

(2) The following changes in the terms of an existing obligation need not be treated as a refinancing:

(i) A reduction in the annual percentage rate with a corresponding reduction in payment amounts, number of payments, or length of maturity.

(ii) A deferral or extension of one payment or a portion of one payment.

(iii) A change in collateral requirements,[66] late payment charges, or prepayment provisions.

(iv) An agreement approved by a court.

(v) A renewal of a single payment obligation that meets the conditions set forth in paragraph (i)(3) of this section.

(vi) An increase in the amount of an existing transaction that meets the conditions set forth in paragraph (i)(4) of this section.

(vii) A change in the number, amounts, or timing of scheduled payments as a result of the consumer's default or delinquency, unless the annual percentage rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in § 226.4(d).

(3) A renewal of a single payment obligation need not be treated as a refinancing if the following four conditions are met:

(i) All disclosures required by this subpart were made for the original transaction or a previous refinancing.

(ii) The new amount financed does not exceed the sum of the unpaid balance plus any earned finance charge and premiums for continuation of insurance of the types described in § 226.4(d).

(iii) The disclosed annual percentage rate is not increased.

[62] This provision shall not apply to any rate increase due to delinquency (including late payment), default, assumption, or transfer of collateral.

[63] This need not include limitations prescribed under state usury or rate ceiling laws.

[64] If the amount of any payment in a series is not more than 5 percent larger than the smallest payment in that series, the creditor may treat all payments in the series as equal by disclosing the largest payment amount, labeled as an estimate. This rule governs only the disclosure of payment amounts; it does not affect the disclosure of the finance charge under paragraph (h)(2)(iii) of this section or the determination of the annual percentage rate under § 226.12.

[65] If the rule in footnote 64 is used, the total of payments shall reflect the payment amounts disclosed and shall be labeled as an estimate.

[66] The consumer may have the right under § 226.13, to rescind the addition of a security interest in the consumer's principal dwelling.

(iv) The term of the renewal period does not exceed the disclosed term by more than four days.

(4) An increase in the amount of an existing obligation need not be treated as a refinancing if it results from any of the following three occurrences:

(i) Reimbursement of the creditor for expenses incurred in performing the consumer's obligation to protect or preserve the collateral (such as maintaining insurance or paying taxes). No new disclosures are required whether the expense is incurred at the consumer's request or upon the consumer's failure to perform an obligation and whether or not an additional finance charge is assessed as a result of the increase.

(ii) The purchase of property or services under an agreement that provides for the addition of subsequent sales to an outstanding balance, if the creditor has complied with the series of sales requirements of paragraph (l) of this section.

(iii) The addition or renewal of optional insurance purchased by the consumer after consummation of the existing transaction. If the initial premium advance is secured by the consumer's principal dwelling, the insurance transaction may be rescindable under § 226.13.

(j) *Assumptions—new disclosures.* An assumption occurs if the creditor agrees with a subsequent consumer to accept that consumer as an obligor on an existing obligation with another consumer. The creditor shall make new transactional disclosures under paragraph (f) of this section based on the remaining obligation to the subsequent consumer before the assumption occurs.

(k) *Mail or telephone orders—delay in disclosures.* (1) A creditor that receives a purchase order or a request for an extension of credit by mail, telephone, or any other written or electronic communication without personal solicitation may make the transactional disclosures under paragraph (f) of this section no later than the date the first payment is due if the following information describing representative amounts or ranges of credit is made available in written form to the consumer or to the public generally in advance of the actual purchase order or request:

(i) The cash price or the principal amount of the loan.

(ii) The total sale price.

(iii) Any minimum downpayment.

(iv) The finance charge.

(v) The annual percentage rate.

(vi) The number, amounts, and timing of payments.

(vii) The total of payments.

(2) If the information specified in paragraph (k)(1) of this section is not available in the prescribed manner, transactional disclosures under paragraph (f) of this section shall be mde before consummation of the transaction. If the transaction is subject to rescission, see § 226.13.

(l) *Series of sales—delay in disclosures.* (1) If a credit sale is one of a series made under an agreement providing that subsequent sales are added to an outstanding balance, the transactional disclosures under paragraph (f) of this section may be made no later than the date the first payment for the current sale is due if the following two conditions are met:

(i) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, if appropriate, and the method of treating any unearned finance charge.

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

(2) In the absence of an agreement that meets the conditions of paragraph (l)(1), the addition of a sale to an existing balance is a refinancing under paragraph (i) of this section.

(m) *Multiple advance transactions; series of single payment obligations.* (1) If a series of advances may be made under an agreement to extend credit up to a certain amount, the series shall be considered a single transaction.

(2) A credit extension involving a series of single payment obligations executed contemporaneously shall be considered a single transaction.

§ 226.1 Determination of annual percentage rate.

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, which relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method and shall be considered accurate if it is not more than ⅛ of 1 percentage point above or below the annual percentage rate determined in accordance with whichever method is used. Explanations, equations, and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in Supplement I of this regulation (§ 226.40).

(b) *Computation tools.* (1) The Regulation Z Annual Percentage Rate Tables produced by the Board may be used to determine the annual percentage rate, and any rate determined from those tables in accordance with the accompanying instructions complies with the requirements of this section. Volume I of the tables applies to single advance transactions involving up to 480 monthly payments or 104 weekly payments. It may be used for regular transactions and for transactions with any of the following irregularities: an irregular first period, an irregular first payment, and an irregular final payment. Volume II applies to transactions involving multiple advances and any type of payment or period irregularity.

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

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

(d) *Certain transactions involving ranges of balances.* For purposes of disclosing the annual percentage rate referred to in §§ 226.11(k)(1)(v) (Mail or telephone orders—delay in disclosures) and 226.11(l)(1)(i) (Series of sales—delay in disclosures), if the same finance charge is imposed on all balances within a specified range of blances, the annual percentage rate computed for the median balance may be disclosed for all the balances. However, if the annual percentage rate computed for the median balance understates the annual percentage rate computed for the lowest balance by more than 8 percent of the latter rate, the annual percentage rate shall be computed on whatever lower balance will produce an annual percentage rate that does not result in an understatement of more than 8 percent of the rate determined on the lowest balance.

(e) *Payment schedule irregularities.* (1) In determining and disclosing the annual percentage rate, a creditor may disregard an irregularity in the first period that falls within the limits described below and any payment schedule irregularity that results from the irregular first period:

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

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

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

(2) For purposes of paragraph (e)(1) of this section, the "first period" is the period from the date on which the finance charge begins to be earned to the date of the first payment; the "term" is the period from the date on which the finance charge begins to be earned to the date of the final payment; and the "regular period" is the most common interval between payments in the transaction. In transactions involving regular periods that are monthly, semimonthly, or multiples of a month, the length of the irregular and regular periods may be calculated on the basis of either the actual number of elapsed days or an assumed 30-day month. In all other transactions, the length of the periods shall be based on the actual number of elapsed days.

§ 226.13 Right of rescission.

(a) *Consumer's right to rescind.* (1) In a transaction where a security interest is retained or acquired in property used as a consumer's principal dwelling, each consumer whose ownership interest is subject to the security interest shall have the right to rescind the transaction,[67] except for the transactions described in paragraph (f) of this section.

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

(3) The consumer may exercise the right to rescind until midnight of the third business day following the later of either consummation or delivery of the notice required by paragraph (b) of this section and all other material disclosures.[68] If the required notice and material disclosures are not delivered, the right to rescind shall expire the earlier of three years after the date of consummation or the date of the transfer of the property. The rescission period shall be extended by one year in accordance with § 125(f) of the Truth in Lending Act (Title 15, § 1635(f) of the United States Code) if an administrative proceeding is instituted.

(b) *Notice of right to rescind.* In a rescindable transaction, a creditor shall clearly and conspicuously disclose on a separate document—

(1) That a security interest is being retained or acquired in property used as the consumer's principal dwelling;

(2) That the consumer has the right to rescind the transaction;

(3) How the right may be exercised, with a form for that purpose, designating the address of the creditor's place of business where the form may be sent; and

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

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

(d) *Effects of rescission.* A consumer who rescinds a transaction shall not be liable for any amount, including any finance charge; and the security interest giving rise to the right of rescission becomes void. Within 20 days after receipt of a notice of rescission, the creditor shall return any money or property given to any party by the consumer (including any downpayment or other payment) and shall take any action necessary to reflect the termination of the security interest. If the creditor has delivered any money or property, the consumer may retain possession of it until the performance of the creditor's obligations under this paragraph. Upon performance of those obligations, the consumer shall offer to return the money or property; if return of the property in kind would be impracticable or inequitable, the consumer shall offer its reasonable value. At the consumer's option, the offer may be made at the location of the property or at the consumer's residence. If the creditor does not take possession of the money or property within 20 days after the consumer's offer to return it, the consumer may keep it without further obligation. These procedures may be modified by court order.

(e) *Consumer's waiver of right to rescind.* If a consumer determines that, because of a financial emergency, a delay of three business days in the creditor's performance would endanger the welfare, health, or safety of natural persons or risk damage to property that the consumer owns or for which the consumer is responsible, the consumer may modify or waive the right to rescind by giving the creditor a personal, written statement, dated and signed by all consumers entitled to rescind. The statement must describe the emergency and must modify or waive the right to rescind. The use of printed forms is prohibited.

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

(1) A residental mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an existing extension of credit already secured by property used as the consumer's principal dwelling if the new amount financed does not exceed the amount of the unpaid principal balance plus any earned unpaid financed charge on the existing debt. If the new amount financed exceeds the unpaid principal balance plus any earned unpaid finance charge on the existing debt, the right of rescission applies only to that excess and not to the existing debt and its related security interest.

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

(4) An advance in a series of advances or one in a series of single payment obligations that is treated as a single transaction under § 226.11(m) if the notice required by paragraph (b) of this section and all other material disclosures have been given previously to the consumer.

(5) Subordination of a security interest, whether or not the transaction in which the security interest was originally created was exempt from the right of rescission.

§ 226.14 Advertising.

(a) *Generally available terms; accuracy of advertising.* (1) If an advertisement for consumer credit states specific credit terms, it shall state only those terms that the creditor generally arranges or offers.

(2) No advertisement for consumer credit shall contain information that is inaccurate or misleading or that

[67] For purposes of this section, a "transaction" includes the addition to an existing obligation of a security interest in property used as a consumer's principal dwelling. The right of rescission applies, however, only to the addition of the security interest and does not apply to the existing obligation.

[68] The term "material disclosures" means the required disclosure of the annual percentage rate, the finance charge, the amount financed, the total of payments, and the number, amount and timing of payments scheduled to repay the obligation.

otherwise misrepresents the credit offered.

(b) *Advertisement of rate of finance charge.* If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term.[69] If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

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

(i) The amount or percentage of any downpayment or that no downpayment is required.

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

(iii) The amount of any payment.

(iv) The amount of the finance charge.

(v) That there is no charge for credit.

(2) An advertisement stating any of the terms in paragraph (c)(1) of this section also shall state the following terms,[70] as applicable.

(i) The amount of the downpayment or that no downpayment is required.

(ii) the number, amounts, and timing of payments.

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

(d) *Transactions involving a dwelling.* In an advertisement for credit secured by a dwelling, where any series of payments varies because of the inclusion of mortgage insurance premiums, a creditor may comply with paragraph (c)(2)(ii) of this section by stating the number and timing of payments, the amounts of the largest and smallest of those payments, and the fact that other payments will vary between those amounts.

(e) *Catalogs and multiple-page advertisements.* (1) If a catalog or other multiple-page advertisement gives information in a table or schedule of credit terms in sufficient detail to permit determination of the disclosures required by this section, it shall be considered a single advertisement if

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

(ii) Any statement of credit terms, other than the cash price, appearing anywhere else in the catalog or advertisement clearly refers to the page on which the table or schedule begins.

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

(f) *Use of annual percentage rate in oral disclosures.* In an oral response to an inquiry by a consumer about the cost of credit, the creditor shall state as a rate of finance charge only those rates permitted under paragraph (b) of this section.

Subpart D—Consumer Leasing

§ 226.15 Disclosures.

(a) *Who must make disclosures to whom.* (1) If a lease involves only one lessor, that lessor shall make the disclosures required by this section. If a lease involves more than one lessor, only one lessor involved in the lease shall make all the disclosures.

(2) The disclosures shall be made to the consumer; if there is more than one, they may be made to any one of the consumers who is primarily liable under the lease.

(b) *Timing and form of disclosures.* (1) The lessor shall make the disclosures before consummation of the lease.

(2) The disclosures shall be made clearly and accurately on a dated written statement that the consumer may keep, either on the lease contract document or separately. The disclosures shall be grouped together beginning on the front of the document and shall be segregated from other matters, except that, in any multiple-item lease, the description of the leased property required by paragraph (e)(3) of this section may be provided on a separate statement to which the disclosure statement refers. The document may, but need not, include an acknowledgement of receipt.

(c) *Basis of disclosures and use of estimates.* (1) The lessor shall base the disclosures on the information known to it at the time disclosures are made. All disclosures shall be based on the assumption that the consumer will comply with the terms of the lease contract.

(2) If any information necessary to make an accurate disclosure is unknown to the lessor, it shall make the disclosure based on the best information reasonable available to it and shall state clearly that the disclosure is an estimate, except that a lessor may understate the estimated value of the leased property at the end of the lease term when computing the total lease obligation as required by paragraph (f)(3)(i) of this section, if any excess of realized value over estimated value will be given to the consumer at the end of the lease term.

(3) In making calculations and disclosures the lessor need not take into account the effects of the following:

(i) The fact that payments must be collected in whole cents;

(ii) The fact that dates of scheduled lease payments may be changed if the date falls on a Saturday, Sunday, or holiday;

(iii) The fact that months have different numbers of days; and

(iv) The occurrence of leap year.

(d) *Effect of subsequent events.* If a disclosure is rendered inaccurate as a result of an event that occurs after delivery of the disclosures, the resulting inaccuracy is not a violation of this regulation. If the event occurs prior to consummation, the lessor shall disclose the changed terms before consummation. If the event occurs after consummation, the determination of whether new disclosures are required is made under paragraph (g) of this section.

(e) *Content of disclosures.* For each consumer lease, the following items, to the extent applicable, shall be disclosed:

(1) The identity of the consumer.

(2) The identity of the lessor making the disclosures.

(3) A brief description of the leased property, sufficient to identify it to the consumer.

(4) A brief description of every payment made or to be made by the consumer either at or prior to delivery of the leased property, and the total amount of all such payments.

(5) The number, amounts, and timing of periodic lease payments, and the total amount of such payments.[71]

(6) The total amount of charges payable by the consumer during the lease term for official fees, registration, certificate of title, licenses, or taxes, other than charges disclosed under paragraphs (e)(4) and (e)(5) of this section.

(7) All charges, other than those disclosed under paragraphs (e)(4), (e)(5),

[69] The phrase "the cost of your credit as a yearly rate" may, but need not, accompany that term.

[70] One or more examples of typical extensions of credit and any provisions available under § 226.11 may be used in complying with this requirement.

[71] If the amount of any payment in a series is not more than 5 percent larger than the smallest payment in that series, the lessor may treat all payments in the series as equal by disclosing the largest payment amount, labeled as an estimate. If this rule is used, the total of payments shall reflect the payment amounts disclosed and shall also be labeled as an estimate.

or (e)(6) of this section, that are payable by the consumer to the lessor but not included in the periodic lease payments, individually itemized, and the total of such charges.

(8) A brief description of the types and amounts of insurance required or paid for by, or obtained from, the lessor, other than insurance procured by the lessor for its own benefit. If the insurance is obtained from or paid for by the lessor, this description shall include the cost to the consumer.

(9) A statement identifying any express warranties or guarantees made by the lessor or manufacturer that are available to the consumer with respect to the leased property.

(10) A statement identifying the party responsible for maintaining or servicing the leased property and a brief description of the responsibility. If a maintenance or service contract is provided or paid for by the lessor, a brief description of that contract shall also be disclosed.

(11) A statement of reasonable standards for wear and use, if the lessor sets such standards.

(12) If the lessor has taken or will obtain a security interest in connection with the lease (other than a security deposit disclosed under paragraph (e)(4) of this section), a statement of that fact, including a brief description of the property to which it relates. If the security interest relates to after-acquired property, that fact shall also be disclosed.

(13) The amount or method of determining the amount of any penalty or other charge, other than a deferral or extension charge, for default, delinquency, excessive wear or use, or late payments.

(14) A statement of whether or not the consumer has the option to purchase the leased property and, if so, at what times and at what prices or the method of determining the prices.

(15) A statement of the conditions under which the consumer or the lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

(f) *Special disclosures concerning the consumer's liability on termination of a lease.* For any consumer lease in which the consumer's liability at early termination is affected by the realized value of the leased property, or at the end of the lease is based on the estimated value of the leased property, the following items shall be disclosed, as applicable, in addition to the disclosures under paragraph (e) of this section:

(1) A statement of how the consumer's liability at early termination is affected by the realized value of the leased property, or that the consumer shall be liable for the difference between the estimated value of the leased property and its realized value at the end of the lease term.

(2) A statement that the consumer may obtain, at the consumer's expense, a professional appraisal of the value which could be realized at sale of the leased property, and whether the appraisal will be based on the wholesale or retail value of the leased property. The statement shall indicate that the appraisal must be made by an independent third party agreed to by the consumer and the lessor, and that such an appraisal is final and binding on both parties if obtained within a reasonable time after early termination or the end of the lease term.

(3) Where the consumer's liability at the end of the lease term is based on the estimated value of the leased property:

(i) The value of the property at consummation of the lease, the itemized total lease obligation, and the difference between them;

(ii) A statement that

(A) The estimated value of the leased property is presumed to be unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average lease payment allocable to a monthly period, and that the lessor cannot collect the excess except by rebutting this presumption of unreasonableness in a successful court action in which it pays the consumer's attorney's fees, and

(B) These rules concerning the presumption and attorney's fees do not apply to the extent that the excess of estimated value over realized value is due to unreasonable wear or use, or to excessive use.

(iii) A statement that the requirements of paragraph (f)(3)(ii) of this section do not preclude the right of a willing consumer to enter into any mutually agreeable final adjustment regarding excess liability, provided such agreement is reached after the end of the lease term.

(g) *Renegotiations—new disclosures.* (1) Except as provided in this paragraph, a renegotiation occurs when the lessor and the consumer agree to change any of the terms of an existing consumer lease that were previously disclosed under paragraphs (e) or (f) of this section. A renegotiation is a new lease requiring new disclosures.

(2) The following changes in terms of an existing consumer lease need not be treated as a renegotiation:

(i) In a multiple-item lease, the return of one or more leased items or the addition of one or more new items, if the average lease payment allocable to a monthly period is not changed by more than 25 percent;

(ii) A deferral of one periodic lease payment or a portion of a periodic lease payment;

(iii) The addition or renewal of optional insurance purchased by the consumer after consummation of the existing transaction, if the appropriate disclosures are provided for the insurance transaction itself; or

(iv) An extension of the lease term on a month-to-month or other basis with no other changed terms.

(3) A lessor that extends, or permits a consumer to extend, the duration of a consumer lease for more than one month shall, for the purposes of § 183(a) of the act, reclaculate the estimated value of the leased property to reflect the actual lease term.

§ 226.16 Advertising.

(a) *Generally available terms.* If an advertisement states specific consumer lease terms, it shall state only those terms that the lessor generally arranges or offers.

(b) *Advertisement of terms that require additional disclosures.* Except as provided in paragraph (c) of this section, if an advertisement states the amount of any payment, the number of required payments, or whether or not any payment is required to be made at consummation of the lease, it shall also state, at its option by using one or more examples of typical consumer leases, these terms:

(1) That the transaction advertised is a lease.

(2) The total amount of any payment required to be made at or prior to delivery of the leased property, or that no such payment is required.

(3) The number, amounts, and timing of periodic lease payments and the total of such payments.

(4) Whether or not the consumer has the option to purchase the leased property, and if so at what times, and at what prices or the method of determining the prices.

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes on the consumer at the end of the lease term, including a statement that the consumer shall be liable for any difference between the estimated value of the property and its realized value at the end of the lease term, if such liability exists.

(c) *Multiple-item leases; merchandise tags.* A merchandise tag for an item normally included in a multiple-item lease need not comply with paragraph (b) of this section if it clearly refers to a sign or display, prominently posted in the lessor's showroom, that contains a table or schedule or the items required to be disclosed under paragraph (b) of this section.

(d) *Catalogs and multiple-page advertisements.* (1) If a catalog or other multiple-page advertisement gives information in a table or schedule of lease terms in sufficient detail to permit determination of the disclosures required by this section, it shall be considered a single advertisement, provided:

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

(ii) Any statement or lease terms appearing anywhere else in the catalog or advertisement clearly refers to the page on which the table or schedule begins.

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

Subpart E—Miscellaneous

§ 226.17 Record retention.

(a) *General rule.* A creditor or lessor shall retain evidence of compliance with the requirements of this regulation, including information sufficient to reconstruct the required disclosures, for a period of not less than two years after the date the disclosures are required to be made or an advertisement is first used. The administrative agencies responsible for enforcing the regulation may require creditors and lessors under their jurisdiction to retain records for a longer period where necessary in carrying out their enforcement responsibilities under § 108 of the Truth in Lending Act (Title 15, § 1607 of the United States Code).

(b) *Recordkeeping methods.* Evidence of compliance under this section may be retained by use of microfilm, microfiche, or any other method designed to reproduce business records accurately.

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

§ 226.18 Spanish language disclosures.

(a) *General rule.* All required disclosures under this regulation shall be made in the English language except in the Commonwealth of Puerto Rico, where disclosures may be made, at the creditor's option, in the Spanish language.

(b) *Consumer request; advertising.* If Spanish disclosures are made under paragraph (a) of this section, English disclosures shall be provided upon the consumer's request, either in substitution for the Spanish disclosures or as additional information, except that this requirement shall not apply to advertisements of credit or lease transactions subject to this regulation.

§ 226.19 Effect on state laws.

(a) *Inconsistent disclosure requirements.* A state law that is inconsistent with this regulation is preempted to the extent of the inconsistency. In the case of paragraphs (b)(5), (3)(12), (e), (g), and (h) of § 226.5 (open-end credit disclosures), paragraphs (c) through (f) of § 226.6 (credit card transactions), § 226.7 (billing error resolution), and Subpart D (leasing), a state law is not inconsistent if it is more protective of consumers. A creditor or lessor shall not make any disclosure using a term or form determined by the Board to be inconsistent. A creditor, lessor, state, or other interested party may request the Board to determine whether a state law is inconsistent.

(b) *Equivalent disclosure requirements.* If the Board determines that a disclosure required by state law, other than a disclosure relating to the finance charge or annual percentage rate, is substantially the same in meaning as a disclosure required under the credit provisions of this regulation (Subparts B and C), creditors in that state may make the state law disclosure in lieu of the disclosure required by this regulation. A creditor, state, or other interested party may request the Board to determine whether a state-required disclosure is substantially the same in meaning as a disclosure required by this regulation.

(c) *Request for determination.* (1) A request for a determination that a state law is inconsistent with or substantially the same in meaning as a requirement of this regulation shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

(2) A request for determination shall include each of the following items, to the extent applicable:

(i) The full text of the state statute, regulation, or other document containing the provision that is the subject of the request.

(ii) Any other statute, regulation, or judicial or administrative opinion that implements, interprets or applies the relevant provision.

(iii) A comparison of the state law provision with the corresponding provision of this regulation, including a full discussion of the basis for the requesting party's belief that the state provision is either inconsistent or substantially the same; and

(iv) Any other information that the requesting party believes may assist the Board in its determination.

(3)(i) Any request for determination will be published, with an opportunity for public comment, in the *Federal Register*, unless the Board determines that the time required for prior notice and opportunity for comment would be contrary to the public interest and publishes its reasons for that determination.

(ii) Subject to the Board's rules regarding availability of information (Title 12, Part 261 of the Code of Federal Regulations), all requests made under this section, including any documents and other material submitted in support of the requests, will be made available for public inspection and copying.

§ 226.20 State exemptions.

(a) *General rule.* Any state may apply to the Board to exempt any class of transactions within the state from the requirements of Chapter 2 (Credit Transactions), Chapter 4 (Credit Billing), or Chapter 5 (Consumer Leases) of the Truth in Lending Act and the corresponding provisions of the regulation. The Board will grant an exemption if it determines that

(1) The state law is substantially similar to the requirements of the act and regulation or, in the case of Chapters 4 or 5, the consumer is afforded greater protection under state law than under the federal act and regulation; and

(2) There is adequate provision for enforcement.

(b) *Procedures.* (1) The procedures under which a state may apply for an exemption under paragraph (a) of this section are set forth as follows

(i) Disclosure and rescission requirements (§§ 121–131 of Chapter 2), Supplement II;

(ii) Issuance of unsolicited credit cards and liability for unauthorized use (§§ 132–133 of Chapter 2), Supplement IV;

(iii) Fair credit billing requirements (§§ 161–171of Chapter 4), Supplement V; and

(iv) Consumer leasing requirements (§§ 181–186 of Chapter 5), Supplement VI.

(2) Supplements II through VI may be obtained from any Federal Reserve

Bank or from the Board in Washington, D.C. 20551.

(c) *Civil liability. (1) No exemptions granted under this section shall extend to the civil liability provisions of §§ 130 and 131 of the Truth in Lending Act (Title 15, §§ 1640 and 1641 of the United States Code).*

(2) After an exemption has been granted, the disclosure requirements under the applicable state law (except any additional requirements not imposed by this regulation) shall consititue the disclosure requirements of federal law, and information required under that state law (except additional requirements not imposed by this regulation) shall constitute the information required under Chapters 2, 4 and 5 of the act for the purposes of § 130(a) of the Truth in Lending Act.

(d) *Exemptions granted.* Supplement III to Regulation Z sets forth the exemptions granted by the Board to particular classes of credit transactions within states.

226.21 Issuance of staff interpretations.

(a) *Offical staff interpretations.* Each official in the Board's Division of Consumer and Community Affairs is authorized, in that official's discretion, to issue an offical staff interpretation of this regulation. In accordance with § 130(f) of the Truth in Lending Act (Title 15, § 1640(f) of the United States Code), a creditor or lessor who acts in conformity with an official staff interpretation, whether the creditor or lessor actually knows of the interpretation or not, shall not be held liable in any court or administrative proceeding for its action.

(b) *Procedure for issuance of official staff interpretations.* (1) A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

(2) If, in the opinion of an authorized official, issuance of an official staff interpretation is appropriate, it will be published in the Federal Register to become effective 30 days after the publication date. If a request for public comment is received and granted, the effective date will be suspended. The interpretation will then be republished in the Federal Register and the public given an opportunity to comment. An official staff interpretation issued after opportunity for public comment shall become effective upon republication in the Federal Register.

(3) A request for public comment on an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and postmarked or received by an authorized official within 30 days of the interpretations's publication in tha Federal Register. The request shall contain a statement setting forth the reasons why the person making the request believes that public comment would be appropriate.

(c) *Unofficial staff interpretations. (1) If, in the judgment of the authorized officials, an official staff interpretation should not be issued, an unofficial staff interpretation may be issued. Although an unofficial staff interpretation does not provide the formal protection afforded under the law as mentioned in paragraph (a) of this section, it represents the view of the staff which has been empowered by the Board to express opinions on the requirements of the regulation.*

(2) A request for an unofficial staff interpretation should be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request should include all information and documents which, in the view of the requesting party, may be relevant to the interpretation.

(d) *Scope of interpretations.* No official or unofficial staff interpretation will be issued approving creditors' or lessors' forms, statements, calculation tools, or methods. This restriction need not apply to forms, statments, tools, or methods whose use is required or sanctioned by a government agency.[72]

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[72] For purposes of this paragraph, "government agency" includes any department or agency of the United States, of a state or of a political subdivision. The term also includes quasi-governmental entities such as the Government National Mortgage Corporation.

APPENDIX A—MODEL DISCLOSURE FORMS AND CLAUSES

SECTION A(1)—DISCLOSURES REGARDING BALANCE COMPUTATION METHODS (§§ 226.5(b)(1)(iii) and 226.5(c)(6))

(a) Adjusted balance method

The balance to which the periodic rate is applied in calculating the finance charges is the total amount you owe us at the end of one billing period [excluding any part of that amount that represents a finance charge], less all payments and credits we receive before the end of the next billing period.

(b) Previous balance method

The balance to which the periodic rate is applied in calculating the finance charges is the total amount you owe us at the end of each billing period [excluding any portion of that amount that represents a finance charge].

(c) Average daily balance method (excluding current transactions)

The balance to which the periodic rate is applied in calculating the finance charges is the sum of the actual amounts owing each day of the billing period, not including transactions first charged to your account during the period [and not including any portion of the actual amount that is a finance charge], divided by the total number of days in the billing period.

(d) Average daily balance method (including current transactions)

The balance to which the periodic rate is applied in calculating the finance charges is the sum of the actual amounts owing each day of the billing period, including transactions first charged to your account during the period [but not including any portion of the actual amount that is a finance charge], divided by the total number of days in the billing period.

SECTION A(2)—STATEMENT REGARDING BILLING ERROR RIGHTS (§ 226.5(b)(5))

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR BILL

1. Send your question in writing [at the creditor's option: on a separate sheet] to the address listed on your bill after the words: "Send Inquiries To:" or similar wording. [Alternate: Write to us at (insert address)]. Write to us as soon as possible but, in any case, early enough so that your letter reaches us within 60 days after the bill was mailed to you. You can telephone, but doing so will not preserve your rights.

* Indicate your name and account number.

* Describe the error and explain, if you can, why you believe it is an error. If you need more information, describe the item you are not sure about.

* Indicate the dollar amount involved in the suspected error.

If you have a savings or checking account with us, and have authorized automatic payment of credit card bills from your account, you can stop or reverse payment on any amount you think is wrong. However, your letter must reach us within 16 days after the bill was sent to you. We still must investigate your inquiry even if you do not meet this 16-day deadline.

2. We must acknowledge your letter within 30 days, unless we have corrected the error by then. Otherwise, within 90 days we must either correct the error or explain why we believe the bill was correct.

3. After we have received your letter, we cannot try to collect any amount you are disputing, or report you to a credit bureau as delinquent. However, we can continue to bill you for the amount you are disputing, including any finance charges that would normally be imposed, and can apply any disputed amount that you have not paid against your credit limit. You remain obligated to pay the parts of your bill not in dispute.

4. If we determine that we made a mistake on your bill, you will not have to pay any finance charges on any disputed amount. If we haven't made a mistake, you may have to pay finance charges on any amount in dispute, and you will have to make up any missed required payments on the disputed amount. In either case we will send you a statement of the amount you owe, and when it is due.

5. If you fail to pay the amount that we conclude is owing, we may report you as delinquent to credit bureaus and other creditors. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell those credit bureaus and other creditors of your dispute and tell you specifically which credit bureaus and other creditors we have contacted. Once the matter has been settled between us, we must inform those to whom we reported you as delinquent.

6. If we don't follow these rules, we can't collect the first $50 of the disputed amount including finance charges, even if your bill was correct.

SPECIAL RULE FOR CREDIT CARDS

If you have a problem with the quality of property or services purchased with a credit card, you may have the right not to pay the remaining amount due on them, if you first try in good faith to correct the problem with the merchant. There are two limitations on this right:

a. You must have made the purchase in your home State or, if not within your home State, within 100 miles of your current mailing address; and

b. The purchase price must have been more than $50.

These limitations do not apply, however, if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

SECTION A(3)—ALTERNATIVE BILLING RIGHTS STATEMENT (§ 226.5(a)(2))

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR BILL

1. Send your question in writing [at the creditor's option: on a separate sheet] to the address listed on your bill after the words: "Send Inquiries To:" or similar wording. [Alternate: Write your question to us at: (insert address.)] Write to us as soon as possible but, in any case, early enough so that your letter reaches us within 60 days after the bill was mailed to you. You can telephone, but doing so will not preserve your rights.

* Indicate your name and account number.

* Describe the error and explain, if you can, why you believe it is an error. If you need more information, describe the item you are not sure about.

* Indicate the dollar amount of the suspected error.

If you have a savings or checking account with us, and have authorized automatic payment of credit card bills from your account, you can stop or reverse payment on any amount you think is wrong. However, your letter must reach us within 16 days after the bill was sent to you.

You remain obligated to pay the parts of your bill not in dispute. However, you do not have to pay any amount in dispute while we are resolving the dispute, nor can we report disputed amounts as delinquent or take any action to collect those amounts.

If you have a problem with the quality of property or services purchased with a credit card, you do not have to pay the remaining amount due on them as long as you first try in good faith to resolve the problem with the merchant. The purchase must have occurred in your home State or within 100 miles of your mailing address and the purchase price must have been more than $50 (these two conditions do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services).

This is a summary of your rights; a full statement of your rights and our responsibilities under the Federal Fair Credit Billing Act will be sent to you if you request it, and in response to a billing error notice.

SECTION A(4)—NOTICE REGARDING LIABILITY FOR UNAUTHORIZED USE (§ 226.6(b)(2))

You may be liable for the unauthorized use of your credit card [or other term that describes the credit device]. You will not be liable for unauthorized use that occurs after you notify [name of card issuer or its designee] at [address and telephone number] orally or in writing of loss, theft, or possible unauthorized use. In any case, your liability shall not exceed [insert $50 or any lesser amount under other applicable law or under any agreement with the cardholder.]

SECTION A(5)—NOTICE OF RIGHT TO RESCIND (§ 226.9(a)(1)(i))

NOTICE OF RIGHT TO CANCEL

You have entered into a transaction that may result in a security interest in your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following three events occurs last:

(1) the date the transaction was entered into, which was ________

(2) the date you received your initial Truth in Lending disclosures.

(3) the date you received this notice of your right to cancel.

If you decide to cancel this transaction, you may do so by notifying us, in writing, at ________ (creditor's name and business address) ________. You may use any written statement that is signed and dated to cancel this transaction, or you may use this notice by dating and signing below. If you use this notice, you may want to make a copy for yourself since it contains important about your rights and it is proof of when you cancelled.

If you cancel by mail or telegram, the notice must be sent no later than midnight of the third business day after the latest of the three events listed above. If you use any other means to cancel, it must be delivered to the above address no later than that time.

If you cancel the transaction, the security interest is also cancelled. Within 20 days of receiving your notice, we must take the steps necessary to reflect the fact that the security interest in your home has been cancelled and we must return to you any money or property you have given to us or to anyone else in connection with this transaction. If we have given you any money or property, you may keep it until we have performed our obligations. You must then offer to return the money or property; if return of the property itself is impractical or unfair, you must offer its reasonable value. At your option, you may make the offer at your home or at the location of the property. If we do not take possession of the money or property within 20 days of your offer, you may keep it without further obligation.

I HEREBY CANCEL THIS TRANSACTION. ________________________
(consumer's signature) (date)

SECTION A(6)—NOTICE OF RIGHT TO RESCIND (§ 226.9(a)(1)(ii)(A))

NOTICE OF RIGHT TO CANCEL

You have agreed with us to establish an open-end credit account that is secured by your home. You have the right under federal law to cancel this account, without cost, within three business days from whichever of the following three events occurs last:

(1) the date the account was opened, which is __________.

(2) the date you received your initial Truth in Lending disclosures.

(3) the date you received this notice of your right to cancel.

You may cancel the account by notifying us, in writing, at (creditor's name and business address). You may use any written statement that is signed and dated to cancel this account, or you may use this notice by signing and dating below. If you use this notice, you may want to make a copy for yourself since it contains important about your rights, and it is proof of when you cancelled.

If you cancel by mail or telegram, the notice must be sent no later than midnight of the third business day after the latest of the three events listed above. If you use any other means to cancel, it must be delivered to the above address no later than that time.

If you cancel this account, the security interest is also cancelled. Within 20 days of receiving your notice, we must take the steps necessary to reflect the fact that the security interest in your home has been cancelled and we must return to you any money or property you have given to use or to anyone else in connection with this account. If we have given you any money or property, you may keep it until we have performed our obligations. You must then offer to return the money or property; if return of the property itself is impractical or unfair, you must offer its reasonable value. At you option, you may make the offer at your home or at the location of the property. If we do not take possession of the money or property within 20 days of your offer, you may keep it without further obligation.

I HEREBY CANCEL THIS ACCOUNT. ______________________________
(consumer's signature) (date)

SECTION A(7)—MODEL FORM FOR TRANSACTIONAL DISCLOSURES (§ 226.11(f))

____
(Name of Creditor)

____
(Address)

____

FINANCE CHARGE (the dollar amount the credit will cost you) $__________

ANNUAL PERCENTAGE RATE (the cost of your credit as a yearly rate) __________%

Amount Financed (the amount of credit provided to you or on your behalf) $__________

You have the right to receive a written itemization of the Amount Financed at this time. Please initial the appropriate space.

_____ Yes, I want a written itemization.

_____ No, I do not want a written itemization.

Total of Payments (the amount you will pay when you make all payments as scheduled) $__________

The total of payments will be paid in ______[monthly] payments of $________ starting on ________ and due on the ________ day of each [month].

* Total Sale Price (the total cost of your purchase on credit, including your downpayment of $_______) $__________

Insurance
Credit life and disability insurance is not required to obtain credit, and it will not be provided unless you sign and agree to pay the additional cost. The cost for such insurance is:

Credit Life [for _____ years] $_______ _____ I want credit life insurance

Credit Disability [for ____ years] $_______ _____ I want credit disability insurance

____
(signature)

Property insurance may be provided by anyone you choose. [If you get the insurance from us, the cost will be $______.]

Late Charge You will be charged [$______] [_____% of the payment] if a payment is not received within _____ days of its due date.

Security We are taking a security interest in [the goods being purchased.] [______________________.]
(other property)

Prepayment If you pay off early, [you are [not] entitled to a refund of some of the finance charge.] [you will pay a penalty.]

See your contract documents for additional information about nonpayment, default, our right to accelerate your debt, and prepayment rebates and penalties.

** A subsequent purchaser or assignee may [not] assume this obligation on its original terms.

[I have received a copy of this statement.]

[______________________________] [______________________]
(name) (date)

*This disclosure is required only for credit sales. Otherwise, disclosures for sales and loans are identical.

**This disclosure is required only for residential mortgage transactions.

SECTION A(8)—ITEMIZATION OF AMOUNT FINANCED (§ 226.11(f)(2)(ii))

Itemization of Amount Financed of $_____

Cash price		$_____
Cash downpayment		$_____
Trade-in		$_____
Prepaid finance charge		$_____
Amount paid to you		$_____
Amount credited to your [account] [loan] with us		$_____
Amounts paid to others on your behalf		$_____
______________________	$_____	
______________________	$_____	
______________________	$_____	

SECTION A(9)--SAMPLE FORM FOR ALTERNATE SHOPPING DISCLOSURES (§ 226.11(h))

XYZ AUTO

New Car Financing

15% ANNUAL PERCENTAGE RATE (the cost of your credit expressed as a yearly rate)

Loan Term (in months)	Amount Financed*	Monthly Payment Amount	Total of Payments**	FINANCE CHARGE (the dollar amount the credit will cost you)
36	$5000	$ 173.33	$ 6239.76	$ 1239.76
	6000	207.99	7487.71	1487.71
	7000	242.66	8735.66	1735.66
48	5000	139.15	6679.38	1679.38
	6000	166.98	8015.26	2015.26
	7000	194.82	9351.13	2351.13

*The amount financed is the amount of credit provided to you or on your behalf, figured by taking the cash price of the car, subtracting the downpayment (including any trade-in) and any finance charge you must pay at the time of purchase, and adding other items you wish to finance, such as insurance.

You have the right to receive a written itemization of the amount financed before your purchase is completed, if you request it in writing.

**The total of payments is the amount you will pay when you make all payments as scheduled. The total of payments plus your downpayment and trade-in equals the total sale price of your car bought on credit.

Your new car will serve as security for repayment.

If any payment is more than 10 days late, you will have to pay a late charge of $5.

If you pay off early, you will be entitled to a refund of some of the finance charge.

For more information on the effects of early payment, default, nonpayment and our right to accelerate your debt, see the installment sales agreement.

SECTION A(10)—NOTICE OF RIGHT TO RESCIND (§ 226.13(b))

NOTICE OF RIGHT TO CANCEL

You have entered into a transaction that may result in a security interest in your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following three events occurs last:

(1) the date the transaction was entered into, which was ____________.

(2) the date you received your Truth in Lending disclosures.

(3) the date you received this notice of your right to cancel.

If you decide to cancel this transaction, you may do so by notifying us, in writing, at ____________ (Creditor's name and business address). You may use any written statement that is signed and dated to cancel this transaction, or you may use this notice by dating and signing below. If you use this notice, you may want to make a copy since it contains important information about your rights and it is proof of when you cancelled.

If you cancel by mail or telegram, the notice must be sent no later than midnight of the third business day after the latest of the three events listed above. If you use any other means to cancel, it must be delivered to the above address no later than that time.

If you cancel the transaction, the security interest is also cancelled. Within 20 days of receiving of your notice, we must take the steps necessary to reflect the fact that the security interest in your home has been cancelled and we must return to you any money or property you have given to us or to anyone else in connection with this transaction. If we have given you any money or property, you may keep it until we have performed our obligations. You must then offer to return the money or property; if return of the property itself is impractical or unfair, you must offer its reasonable value. At your option, you may make the offer at your home or at the location of the property. If we do not take possession of the money or property within 20 days of your offer, you may keep it without further obligation.

I HEREBY CANCEL THIS TRANSACTION. ____________ (consumer's signature) (date)

SECTION A(11)—DISCLOSURES REGARDING VARIABLE RATES (§ 226.11(f)(5))

The annual percentage rate may increase during the term of this transaction under the following conditions:

[An increase in the prime interest rate of this lender]
[Your deposit accounts fail to maintain a balance of ____________]
[You terminate your employment with ____________]

An increase is limited in the following manner:

[The rate will not increase above ________%]
[The maximum increase at one time will be ________%]

Any increase will take the form of:

[Higher payment amounts]
[More payments of the same amount]
[A larger amount due at maturity]

SECTION A(12)—DISCLOSURES REGARDING DEMAND OBLIGATIONS (§ 226.11(f)(8))

This obligation is payable on demand.

[All disclosures are based on an assumed maturity of one year.]

APPENDIX B—ANNUAL PERCENTAGE RATE COMPUTATIONS (§ 226.8(c)(2)(iii)(B))

In determining the denominator of the fraction under § 226.8 (c)(2)(iii)(B), no amount will be used more than once when adding the sum of the balances */ to which periodic rates apply to the sum of the amounts financed to which specific transaction charges apply. In every case the full amount of transactions to which specific transaction charges apply shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance to which a periodic rate is applied, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance—none.

A specific transaction of $100 occurs on first day of the billing cycle. The average daily balance is $100. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1 1/2% applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance to which the periodic rate applies exceeds the amount of specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4 1/2%) multiplied by 12 (the number of months in a year), i.e., 54%.

2. Previous balance—$100.

A specific transaction of $100 occurs at midpoint of the billing cycle. The average daily balance is $150. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1 1/2% applicable to the average daily balance. The numerator is the amount of finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance to which the periodic rate applies exceeds the amounts of specific transactions (such excess in this case is $50), totaling $150.

As explained in example 1, the annual percentage rate is 3 1/2% x 12 = 42%.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100, plus the balance to which only the periodic rate is applicable, the $100 previous balance). As explained in example 1, the annual percentage rate is 2 1/4% x 12 = 27%.

*/ Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase "sum of the balances" shall also mean the "average of daily balances."

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the customer made a payment of $50 at midpoint of billing cycle, the numerator is $3.75 and the denominator is $150 (the amount of the transaction, $100, plus the balance to which the periodic rate is applicable, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2 1/2% x 12 = 30%.

5. Previous balance—$100.

A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1 1/2% applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1 2/3% x 12 = 20%.

6. Previous balance—none.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3% of the transaction amount of $3.00. The periodic rate is 1 1/2% per month applied to the average daily balance. The numerator is the amount of the finance charge, which is $3.75, including the $3.00 transaction charge and $.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction ($100) plus the amount by which the balance to which the periodic rate is applied exceeds the amount of the transaction ($0). Note that in this situation, where the transaction amount exceeds the balance, the resulting number is considered to be zero rather than a negative number (50 - 100 = -50). The denominator is thus $100. The resulting annual percentage rate is 3 3/4% x 12 = 45%.

Board of Governors of the Federal Reserve System, April 28, 1980.
Theodore E. Allison,
Secretary of the Board.

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