48 F.R. 4669

PROPOSED RULES

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z.; Doc. No. R-0450]

Truth in Lending; Definition of Arranger of Credit; Exemption of Certain Student Loans; Treatment of Certain Disclosure Errors; and Official Staff Commentary Update

Wednesday, February 2, 1983

***4669** AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule and proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed amendments to revised Regulation Z, Truth in Lending, to implement Truth in Lending amendments made in the Garn-St Germain Depository Institutions Act of 1982. The proposal would amend 12 CFR Part 226 to delete from coverage arrangers of credit and exempt certain student loans. For purposes of administrative enforcement, the proposal would also amend two footnotes relating to disclosure errors caused by the use of faulty calculation tools. This notice also contains proposed changes to the official staff commentary, which applies and interprets the requirements of the revised Regulation Z as a substitute for individual staff interpretations of the regulation. Some of the changes reflect the statutory amendments while others update the current commentary.

DATE: Comments must be received on or before March 3, 1983.

ADDRESS: Comments should be mailed to William W. Wiles, 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. To aid in their consideration, comments should include a reference to Doc. No. R-0450, and discussion of each section should begin on a separate page. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affaris, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3667 or (202) 452-3867:

***4670** Regulatory amendments--Claudia Yarus.

Commentary:

Subpart A--Gerald Hurst

Subpart B--Ruth Amberg, Jesse Filkins, Richard Garabedian, Lynn Goldfaden, Gerald Hurst, John Wood

Subpart C and Appendices--Clarence Cain, Lucy Griffin, Rugenia Silver, Susan Werthan, Claudia Yarus, Steven Zeisel

Subpart D--Rugenia Silver

SUPPLEMENTARY INFORMATION: 1. Introduction. This notice contains three types of changes to the Board's Regulation Z and the accompanying official staff commentary. First, the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320, October 15, 1982) (DIA) made two amendments to the Truth in Lending Simplification and Reform Act of 1980. Section 103(f) of the Truth in Lending Act was amended by deleting "arrangers of credit" from the definition of "creditor," effective October 1, 1982. Section 104 was amended by exempting from coverage (both prospectively and retroactively) loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.). To implement these statutory amendments, the Board proposes to amend § 226.2 of Regulation Z by removing the definition of "arranger of credit" and removing "arrangers of credit" from the "creditor" definition, and to amend § 226.3 by adding a new paragraph that exempts loan programs under Title IV of the Higher Education Act of 1965. These changes are being made pursuant to clear congressional guidance and it is expected that there will be little further revision in the final document.

Second, proposed amendments to footnote 31a (§ 226.14(a)) and footnote 45a (§ 226.22(a)) are being made. These footnotes protected creditors from liability for use of faulty calculation tools. The footnotes provided that an error in the disclosure of the annual percentage rate or finance charge was not considered a violation if: (1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor discontinued use of the tool and notified the Board in writing of the error in the calculation tool. Thus, errors that met these criteria were not violations and creditors found to have such errors were protected from both civil and administrative actions, particularly restitution. These provisions were in the original regulation because the Board believed that the vast majority of creditors did not possess the specialized technical knowledge necessary to evaluate calculation tools internally and needed to rely on the producers of those tools to provide that knowledge.

The Board eliminated the protection provided by the footnotes as of October 1, 1982, the effective date of the amended act, in the belief that the act's expansion of the bona fide error defense to civil liability made the footnotes unnecessary.

Upon further review, however, the Board believes that the elimination of the protection provided by the footnotes has the effect, without the intent, of exposing creditors to restitution. The amended act protects creditors from civil liability for violations resulting from bona fide errors, even in the absence of the footnotes. However, without the protection of the footnotes creditors could be subject to administrative enforcement, including restitution, for the same errors. If the proposal is adopted, the Board anticipates that it would be retroactive to October 1, 1982.

Finally, proposed changes to the Regulation Z official staff commentary (Supplement I to Part 226) are being made. Some of the proposed changes correspond to the regulatory amendments implementing the DIA and serve to conform the regulation and commentary. The other proposed commentary changes update the document.

This is a periodic update to the commentary, as amended effective September 17, 1982 (47 FR 41338, September 20, 1982) and responds to significant questions that have arisen since the last update. The types of changes being proposed generally give creditors more flexibility in making disclosures, while preserving basic consumer protections.

Certain conventions have been used to highlight the revised language in the commentary. New language is highlighted by bold-faced arrows, while language that has been deleted is set off with brackets.

All the proposed regulatory and commentary changes are being published for comment at the same time to minimize the burden on potential commenters and on the credit industry. Staff believes that this document, although comprehensive, will insure uniform compliance and ease the complexity of compliance by prescribing only one effective date.

Comments must be received by March 3, 1983 and it is essential that they be timely in order to assure final action by April 1. To expedite analysis of the comments, commenters are requested to identify comments by section and paragraph numbers and to begin discussion of each section on a separate page. If comments are received on issues not raised by the proposed commentary revisions, these comments would most likely be considered for possible inclusion in the next commentary update.

Final revisions will be published in the Federal Register; it is anticipated that final publication will be at the end of March. Although creditors will be able to rely on the revisions at that time, the applicability of the revisions will be optional until October 1, 1983. The later date will be provided to minimize any difficulties that creditors may experience in adjusting to the revisions.

2. Proposed revisions. Regulation. Following is a brief description of the proposed regulatory revisions:

Subpart A--General

Section 226.2 Definitions and rules of construction.

(a)(3) "Arranger of credit"

This definition would be removed to implement the Truth in Lending Act amendment to the definition of "creditor" made in the DIA. The paragraph number will be reserved for future use in order to avoid the need for renumbering all subsequent definitions.

(a)(17) "Creditor"

This definition would be amended by removing paragraph (a)(17)(ii). The amendment would conform the regulatory definition to the statutory definition as amended by the DIA. Paragraphs (a)(17)(iii), (iv), and (v) of the current definition would be redesignated as paragraphs (a)(17)(ii), (iii), and (iv), respectively.

Section 226.3 Exempt transactions.

Paragraph (f) would be added to exempt loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965. The DIA Truth in Lending amendments expressly exempted these loans from coverage.

Sections 226.14 and 226.22 Determination of annual percentage rate.

The last sentence of both footnote 31a and footnote 45a would be removed. This amendment would reinstate the protections provided by the two footnotes.

Commentary. Following is a brief description of the proposed revisions to the commentary:

Section 226.2 Definitions and rules of construction.

***4671** Subpart A--General

2(a)(3) "Arranger of Credit"

Comments 2(a)(3)-1 through 6 would be removed to correspond to the regulatory amendments that remove "arrangers of credit" from the "creditor" definition.

2(a)(4) "Billing Cycle" or "Cycle"

Comment 2(a)(4)-1 would be revised to eliminate possible confusion over whether the periodic statement must in fact be sent within the 4-day interval.

2(a)(17) "Creditor"

Comment 2(a)(17)(ii)-1 would be removed to conform the commentary to the regulatory amendments that implement the DIA Truth in Lending amendments.

The comment designations--Paragraph 2(a)(17)(iv) and Paragraph 2(a)(17)(v)--would be redesignated Paragraph 2(a)(17)(iii) and Paragraph 2(a)(17)(iv), respectively.

2(a)(18) "Downpayment"

Comment 2(a)(18)-1 would be revised to include a cross-reference to the commentary to § 226.2(a)(23). Material that would be added to the commentary to § 226.2(a)(23) discusses the allocation of lump-sum payments between the downpayment and the prepaid finance charge.

2(a)(23) "Prepaid Finance Charge"

A new comment 2(a)(23)-4 would be added to clarify the treatment to be given discounts that are finance charges under § 226.4(b)(9) in transactions involving lump-sum payments by a consumer. This comment discusses the allocation of a lump-sum payment between the downpayment and the prepaid finance charge.

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

A new comment 2(a)(24)-5 would be added to clarify whether certain transactions are "to finance the acquisition" of the consumer's principal dwelling and are therefore residential mortgage transactions.

References

A sentence would be added to the paragraph under 1981 Changes discussing "arranger of credit" indicating that the definition has been removed from the statute. This would reflect the DIA Truth in Lending amendment.

Section 226.3 Exempt transactions.

Comment 3(f)-1 would be added to clarify which loan programs are administered under Title IV of the Higher Education Act of 1965. This comment corresponds to the regulatory amendment implementing the DIA Truth in Lending amendments that exempt these loan programs from the regulation.

Section 226.4 Finance charge.

4(d) Insurance

Comment 4(d)-10 would be revised to provide an exception to the requirement that creditors allocate a portion of the premium for coverages that are not VSI or other property insurance when the amount of the premium attributable to the non-VSI coverages is less than $1.00 (or in the case of multi-year policies, $5.00). Comment is specifically requested on the necessity and desirability of such an exception, as well as the dollar amount that should be provided.

Subpart B--Open-End Credit

Section 226.5 General disclosure requirements.

Comment 5(a)(2)-3 would be added to provide that the rule that the terms "finance charge" and "annual percentage rate" should be more conspicuous than other required disclosures does not apply to numerical amounts or percentages shown as part of the disclosures.

Comment 5(b)(1)-3 would be expanded to clarify that no new initial disclosures need be given when the consumer's account is closed simply to provide the consumer with a new account number, such as when the credit card is reported lost or stolen and a new account number is assigned for security reasons.

Section 226.8 Identification of transactions.

Comment 8-7 would be added to give the creditor the option of two means of identifying credit insurance premiums on the periodic statement when the insurance is offered through the creditor but actually provided by another company. In such a case, the creditor could identify the premium using either the rule in § 226.8(a)(2) for "related" sellers and creditors, or the rule in § 226.8(a)(3) for "non-related" sellers and creditors.

Section 226.9 Subsequent disclosure requirements.

9(c) Change in Terms

The first sentence of comment 9(c)(1)-3 would be revised to clarify that the change-in-terms notice must be provided to the consumer (not merely mailed) no later than the time the change is effective, even when the 15-day advance-notice requirement is inapplicable.

Comment 9(c)(1)-3 would also be revised to add an example of an occurrence that would not be considered an "agreement" for purposes of relieving the creditor of its responsibility to provide an advance change-in-terms notice. If the change is the type that has been unilaterally made by the creditor and is of general applicability, advance notice must be given. Thus, the "agreed-to" rule would not apply in the following example: A creditor has decided to change a term in its open-end plan. Instead of providing change-in-terms notices to its customers 15 days in advance of the term change, the creditor decides to wait until each consumer comes to the creditor's office to request a cash advance. At that time, the consumer is given a change-in-terms notice, and, if the consumer agrees to the term change, the advance is made.

The first sentence of comment 9(c)(2)-2 would be revised to add the words "or payments", which is merely an editorial change.

Comment 9(c)(2)-2 would also be revised to give additional guidance on how the change-in-terms requirement may be satisfied when skip features are involved. Some creditors have indicated that to require a change-in-terms notice about resumption of the original terms may inhibit skip-payment programs. Comment is solicited on whether the proposal alleviates these concerns, and, if not, what specific operational problems remain.

Section 226.15 Right of rescission.

15(a) Consumer's Right to Rescind

Comment 15(a)(3)-4 would be revised to clarify that this example is intended to provide that the sale of the consumer's interest in the property will terminate the right to rescind even though the consumer is financing the transaction. Thus, a sale will terminate the right to rescind even though, for example, the consumer takes back a purchase money note and mortgage or retains legal title through a financing device such as an installment sale.

Subpart C--Closed-End Credit

Section 226.17 General disclosure requirements.

17(a) Form of Disclosures

Comment 17(a)(1)-5 would be expanded to add one example of ***4672** "directly related" information. This example, relating to § 226.18(q), responds to inquiries about an appropriate assumption policy disclosure when a transaction involves a due-on-sale clause. The example would make clear that the creditor may disclose the existence of a due-on-sale clause.

Comment 17(a)(2)-3 would be added to provide that the rule that the terms "finance charge" and "annual percentage rate" should be more conspicuous than other required disclosures does not apply to numerical amounts or percentages shown as part of the disclosures.

17(i) Interim Student Credit Extensions

Comment 17(i)-1 would be amended to remove references to the Guaranteed Student Loan Program and the PLUS program. These loan programs are administered under Title IV of the Higher Education Act of 1965 and are thus no longer covered, pursuant to the statutory amendments exempting these loan programs.

Comment 17(i)-4 would be deleted. This comment addresses loan programs that are now exempt under the DIA Truth in Lending amendments.

Comment 17(i)-5 would be redesignated comment 17(i)-4.

Section 226.18 Content of disclosures.

18(f) Variable Rate

Comment 18(f)-1 would be revised to indicate that the variable-rate disclosure applies not only to an increase in the interest component of the rate but also to increases in other portions of the rate, such as the rate of required credit life insurance. For example, veterans' loan programs in some states require credit life insurance. If a contract allows increases in the rate of the required credit life insurance, the transaction is considered a variable-rate transaction subject to § 226.18(f).

Comment 18(f)-5 would be revised to explain the circumstances under which footnote 43 is available to institutions authorized by recent federal legislation to make alternative mortgage loans. Footnote 43 permits institutions to omit the § 226.18(f) disclosures if variable-rate disclosures are made in accordance with certain variable-rate regulations of other federal agencies. Title VIII of the Depository Institutions Act of 1982 allows non-federally-chartered housing creditors to offer creative financing in accordance with certain federal regulations, even where applicable state law prohibits such financing by state lenders. The revision to the comment would permit those lenders to take advantage of footnote 43, even though they are not subject to examination by the agencies issuing the regulations. Comment is particularly solicited on whether the availability of the footnote should be contingent on whether the institution is subject to routine examination for compliance with these regulations.

Comment 18(f)-5 and the references to other regulations would also be revised to reflect the citation to the Federal Home Loan Bank Board's amended adjustable mortgage loan regulation.

18(q) Assumption Policy

Comment 18(q)-1 would be revised to include a cross-reference to comment 17(a)(1)-5, which permits creditors to state in the Trust in Lending disclosures that a due-on-sale clause is contained in the loan document.

Section 226.19 Certain residential mortgage transactions.

Comment 19(a)-3 would be amended to clarify when a creditor receives an application that is transmitted by an agent or broker.

Section 226.20 Subsequent disclosure requirements.

20(b) Assumptions

Comment 20(b)-1 would be revised to make clear that assumptions other than those defined in § 226.20(b) do not require disclosures.

Comment 20(b)-7 would be added to specify the time of consummation of an assumption.

Comment 20(b)-8 would be added to explain the relationship between the abbreviated disclosures of § 226.20(b) (1) through (5) and the general disclosure requirements of § § 226.17 and 226.18.

Section 226.23 Right of rescission.

23(a) Consumer's Right to Rescind

Comment 23(a)(3)-3 would be revised to clarify that this example is intended to provide that the sale of the consumer's interest in the property will terminate the right to rescind even though the consumer is financing the transaction. Thus, a sale will terminate the right to rescind even though, for example, the consumer takes back a purchase money note and mortgage or retains legal title through a financing device such as an installment sale.

Subpart D--Miscellaneous

Section 226.28 Effect on State Laws.

28(a) Inconsistent Disclosure Requirements

The commentary to § 226.28 would be expanded by the addition of three new comments, reflecting recent Board determinations on the effect of the Truth in Lending Act on the consumer credit laws of Arizona, Florida and Missouri.

Section 226.29 State exemptions.

29(a) General Rule

Comment 29(a)-4 would be revised to reflect three state exemptions from the Truth in Lending Act granted by the Board to Massachusetts, Oklahoma and Wyoming.

Appendix D--Multiple-Advance Construction Loans

The commentary and references to Appendix D would be revised to reflect the fact that multiple-advance transactions other than construction loans may also use the appendix.

Appendix H--Closed-End Model Forms and Clauses

Current comments H-17 through 20 as they reflect the approval under section 113 of the act of student loan disclosure forms issued by the Department of Education would be removed. The loan programs to which the forms apply have been exempted from the regulation in the recent DIA amendments to the Truth in Lending Act. New comments H-17 through 20 would be added to reflect the approval under § 113 of the act of four student loan disclosure forms issued by the Department of Health and Human Services in conjunction with the Health Education Assistance Loan (HEAL) program.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Truth in lending, Penalties.

3. Text of Proposed Regulatory Revisions. Pursuant to the authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend Regulation Z, 12 CFR Part 226, by removing the definition of "arranger of credit" and reserving paragraph (a)(3) of § 226.2; removing paragraph (a)(17)(ii) of § 226.2 and redesignating paragraphs (a)(17) (iii), (iv), and (v) as paragraphs (a)(17) (ii), (iii), and (iv), respectively; adding a new paragraph (f) to § 226.3; and removing the last sentence of both ***4673** footnote 31a to § 226.14 and footnote 45a to § 226.22, to read as follows:

(a) Definitions. * * *

(a)(3) [Reserved]

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§ 226.3-- Exempt transactions.

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(f) Student loan programs. Loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

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4. Text of Proposed Commentary Revisions. The proposed revisions to the commentary (Supplement I to Part 226) read as follows:

Supplement I--Official Staff Commentary--TIL-1

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Subpart A--General

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Section 226.2 Definition and rules of construction.

2(a) Definitions.

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2(a)(3) "Arranger of credit"

Comments 2(a)(3)-1 through 6 are deleted in their entirely.

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2(a)(4) "Billing Cycle" or "Cycle"

1. Intervals. In open-end credit plans, the billing cycle determines the intervals 5at which periodic disclosure statements must be sent; for which periodic disclosure statements are required; these intervals are also used as measuring points for other duties of the creditor. Typically, billing cycles are monthly, but they may be more frequent or less frequent (but not less frequent than quarterly).

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2(a)(17) "Creditor"

Comment 2(a)(17)(ii)-1 is deleted. Comment designations Paragraph 2(a)(17)(iv) and Paragraph (2)(a)(17)(v) are redesignated Paragraph 2(a)(17)(iii) and Paragraph 2(a)(17)(iv). The reference to § 226.2(a)(17)(iv) in new comment 2(a)(17)(iii)-1 is being changed to § 226.2(a)(17)(iii). The reference to § 226.2(a)(17)(v) in new comment 2(a)(17)(iv)-1 is being changed to § 226.2(a)(17)(iv).

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2(a)(18) "Downpayment"

1. Allocation. * * * ;(See the commentary to § 226.2(a)(23).).

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2(a)(23) "Prepaid Finance Charge"

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T2;4. Allocation of lump-sum payments. In a transaction involving a lump-sum payment by the consumer and a discount that is a finance charge under § 226.4(b)(9), the discount is a prepaid finance charge to the extent the lump-sum payment is not applied to the cash price. For example, a creditor sells property to a consumer for $10,000 and requires the consumer to pay $3,000 at the time of the purchase. The cash price of the property is $9,000. Under § 226.4(b)(9), the $1,000 difference between the credit and cash prices is a finance charge. If the creditor applies the entire $3,000 to the cash price and adds the $1,000 finance charge to the interest on the $6,000 to arrive at the total finance charge, all of the $3,000 lump-sum payment is a downpayment and the discount is not a prepaid finance charge. However, if the creditor only applies $2,000 of the lump-sum payment to the cash price, then $2,000 of the $3,000 is a downpayment and the $1,000 discount is a prepaid finance charge...

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

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T2;5. Acquisition. A transaction is not "to finance the acquisition of the consumer's principal dwelling (and therefore is not a residential mortgage transaction) if the consumer had previously purchased the dwelling and acquired some type of title to the dwelling, even though the consumer has not acquired full legal title. Thus, the following types of transactions are not residential mortgage transactions:

1/8 The financing of a balloon payment due under a land sale contract.

1/8 A formal agreement between a creditor holding a seller's mortgage and the buyer of the property which allows the buyer to assume the mortgage, where the buyer previsouly purchased the property and agreed with the seller to make the mortgage payments.

1/8 A loan made to a joint owner of property to buy out the other joint owner's interest..

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Reference

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1981 changes:

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"Arranger of Credit" * * * .This definition was deleted effective October 1, 1982.

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Section 226.3 Exempt transactions.

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3(f) Student Loan Programs

T3>1. Coverage. This exemption applies to the Guaranteed student Loan program, the Auxiliary loans to Assist the Students (also known as PLUS) program, and the National Direct Student Loan program.<<triangle>>

Section 226.4 Finance charge.

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4(d) Insurance

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10. Single-interest insurance defined. The term "single-interest insurance" as used in the regulation refers only to the types of coverage traditionally included in the term "vendor's single-interest insurance" (or "VSI"), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under § 226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. > However, such allocation is not required if the premium attributable to the other coverages included in the policy is less than $1.00 (or $5.00 in the case of a multi-year policy).<<triangle>>

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Subpart B--Open-end Credit

Section 226.5 General disclosure requirements.

5(a) Form of Disclosures

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Paragraph 5(a)(2)

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T3>3. Disclosure of figures--exception to "more conspicuous" rule. The rule that the terms "annual percentage rate" and "finance charge" must be disclosed more conspicuously than other required *4674 disclosures is not applicable to the disclosure of figures (including, for example, the disclosure of amounts, percentages, and dollar signs).<<triangle>>

5(b) Time of Disclosures

5(b)(1) Initial disclosures

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3. Reopening closed account. If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new initial disclosures are required. >No new initial disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the "new" account then continues on the same terms.<<triangle>>

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Section 226.8 Identification of transactions.

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T3>7. Credit insurance offered through the creditor. When credit insurance that is not part of the finance charge (for example, voluntary credit life insurance) is offered to the consumer through the creditor, but is actually provided by another company, the creditor has the option of identifying the premiums in one of two ways on the periodic statement. The creditor may describe the premiums using either the rule in § 226.8(a)(2) for "related" sellers and creditors, or the rule in § 226.8(a)(3) for "non-related" sellers and creditors. This means, therefore, that the creditor may identify the insurance either by providing, under § 226.8(a)(2), a brief identification of the services provided (for example, "credit life insurance"), or by disclosing, under § 226.8(a)(3), the name and address of the company providing the insurance (for example, ABC Insurance Company, New York, New York). In either event, the creditor would, of course, also provide the amount and the date of the transaction.<<triangle>>

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Section 226.9 Subsequent disclosure requirements.

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9(c) Change in Terms

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9(c)(1) Written Notice Required

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3. Timing-advance notice not required. Advance notice of 15 days is not necessary--that is, a notice of change in terms is required, but it may be [sent] >given<<triangle>> as late as the effective date of the change--in two circumstances:

1/8 If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default

1/8 If the consumer agrees to the particular change [(for example, an agreed-upon addition or substitution of collateral)]. >This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount.<<triangle>> [But] >Therefore, the following are not "agreements" between the consumer and the creditor for purposes of § 226.9(c)(1):<<triangle>> the consumer's general acceptance of the creditor's contract reservation of the right to change terms [,or] >;<< triangle>> >> the consumer's use of the account (which might imply acceptance of its terms under state law) [,] >; and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.<<triangle>> [is not an "agreement" between the the consumer and the creditor for purposes of § 226.9(c)(1).]

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9(c)(2) Notice Not Required

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12. Skip features. If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates >or payment<<triangle>> if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. > The change-in-term notice may be combined with the notice offering the reduction. For Example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as "You may skip your October payment, " or "We will waive your finance charges for January," may serve as the change-in-terms notice.<<triangle>>

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Section 226.15 Right of rescission.

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Paragraph 15(a)(3)

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4. Unexpired right of rescission. When the creditor has failed to take the action necessary to start the three-day rescission period running, the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

The expiration of three years after the occurrence giving rise to the right of rescission

Transfer of all the consumer's interest in the property

Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and [takes back] >retains<<triangle>> legal title > or takes back<<triangle>> [through] a purchase money note and mortgage.

Transfer of all the consumer's interest includes such transfers as bequests and gifts. A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of § 226.15. A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.

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Subpart C--Closed-End Credit

Section 226.17 General disclosure requirements.

17(a) Form of Disclosures

Paragraph 17(a)(1)

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5. Directly related. The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. Directly related information includes, for example, the following:

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1/8 A statement that a due-on-sale clause is contained in the loan document. For example, the disclosure given under § 226.18(q) may state, "Someone *4675 buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms."<<triangle>>

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Paragraph 17(a)(2)

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T3>3. Disclosure of figures--exception to "more conspicuous" rule. The rule that the terms "annual percentage rate" and "finance charge" must be disclosed more conspicuously than other required disclosures is not applicable to the disclosure of figures (including, for example, the disclosure of amounts, percentages, and dollar signs).<<triangle>>

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17(i) Interim Student Credit Extensions

1. Definition. Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. These plans include 5, for example, loans made under the Guaranteed Student Loan program, the PLUS program or and other student credit plan, whether government or private, where the repayment period does not begin immediately. Creditors in interim student credit extensions need not disclose the terms set forth in this paragraph at the time the credit is actually extended but must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under § 226.18.

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Comment 17(i)-4 is removed. Comment 17(i)-5 is redesignated comment 17(i)-4.

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Section 226.18 Content of disclosures

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18(f) Variable Rate

1. Coverage. The requirements of § 226.18(f) apply to all transactions in which the terms of the legal obligation allow the creditor to increase >any portion of<<triangle>> the rate originally disclosed to the consumer. The provisions, however, do not apply to increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral.

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5. Other variable-rate regulations. Transactions in which the creditor is required to comply with and has complied with variable-rate regulations of other federal agencies are exempt from the requirements of [this section,] << triangle>>>> section 226.18(f),<<triangle>> by virtue of footnote 43, Those variable-rate regulations include the adjustable mortgage loan instrument regulation issued by the Federal Home Loan Bank Board (12 CFR 545.6-[4] << triangle>>>>2<<triangle>> (a)) [, the graduated payment adjustable mortgage loan instrument regulation issued by the Federal Home Loan Bank Board (12 CFR 545.6-4(b)),] the adjustable-rate mortgage regulation issued by the Comptroller of the Currency (12 CFR 29). The exception in footnote 43 is also available to institutions that are required by state law to comply with the federal variable-rate regulations noted above <<triangle>>or are authorized by Title VIII of the Depository Institutions Act of 1982 (Pub. L. 97-320) to make loans in accordance with those regulations<<triangle>>.

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18(q) Assumption Policy

1. Policy statement. Because a creditor's assumption policy may be based on a variety of circumstances not determinable at the time the disclosure is made, the creditor may use phrases such as "subject to conditions" or "under certain circumstances" in complying with § 226.18(q). <<triangle>>The creditor may state that a due-on-sale clause is contained in the loan document. (See comment 17(a)(1)-5 regarding directly related information.)<<triangle>> The provision requires only that the consumer be told whether or not a subsequent purchaser might be allowed to assume the obligation on its original terms and does not contemplate any explanation of the criteria or conditions for assumabilty.

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References

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Other regulations: 12 CFR 545.6-[4] <<triangle>>2<<triangle>> (a) [and (b)], and

12 CFR 29.

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Section 226.19 Certain residential mortgage transactions.

19(a) Time of Disclosure

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3. Written application. Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a "written application" has been received. In general, Regulation X requires disclosures "To every person from whom the Lender receives or for whom it prepares a written application an application form or forms normally used by the Lender for a Federally Related Mortgage Loan" (24 CFR 3500.6(a)). An application is received when it reaches the creditor in any of the ways applications are normally transmitted--by mail, hand delivery, or through an intermediary agent or broker. <<triangle>>If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.<<triangle>>

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Section 226.20 Subsequent disclosure requirements.

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20(b) Assumptions

1. General definition. An assumption as defined in § 226.20(b) is a new transaction and new disclosures must be made to the subsequent consumer. An assumption under the regulation requires the following three elements:

1/8 A residential mortgage transaction

1/8 An express acceptance of the subsequent consumer by the creditor

1/8 A written agreement

The assumption of a non-exempt consumer credit obligation requires no disclosures unless all three elements are present. <<triangle>>Thus, the creditor of an existing personal property transaction on which a new customer becomes a primary obligor need not provide disclosures. For example, and automobile dealer need not provide Truth in Lending disclosures to a customer who assumes an existing obligation secured by an automobile. However, a residential mortgage transaction with the elements described in § 226.20(b) is an assumption that calls for new disclosures; the disclosures must be given whether or not the assumption is accompanied by changes in the terms of the obligation.<<triangle>>

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<<triangle>>7. Time of disclosures. Assumption disclosures must be provided to the new consumer before consummation of the transaction, that is, before the new consumer has been accepted as a primary obligor on the transaction.

8. Abbreviated disclosures. The abbreviated disclosures permitted for assumptions of transactions involving add-on or discount finance charges must be made clearly and conspicuously in writing in a form that the consumer may keep. However, the creditor need not comply with the segregation requirement of § 226.17(a)(1). The terms "annual percentage rate" and "total of payments," when disclosed according to § 266.20(b)(4) and (5), are not subject to the description requirements of ***4676** § 226.18(e) and (h). The "annual percentage rate" disclosed under § 226.20(b)(4) need not be more conspicuous than other disclosures.<<triangle>>

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Section 226.23 Right of rescission.

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23(a) Consumer's Right to Rescind

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Paragraph 23(a)(3)

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3. Unexpired right of rescission. When the creditor has failed to take the action necessary to start the three-business day rescission period running, the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

1/8 The expiration of three years after consummation of the transaction

1/8 Transfer of all the consumer's interest in the property

1/8 Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and [takes back] >;retains<< triangle>> >> legal title >or takes back<<triangle>> [through] a purchase money note and mortgage

Transfer of all the consumer's interest includes such transfers as bequests and gifts. A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of this section. A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.

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Subpart D--Miscellaneous

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Section 226.28 Effect on State laws.

28(a) Inconsistent Disclosure Requirements

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T3>8. Preemption determination--Arizona. Effective October 1, 1983, the Board has determined that the following provisions in the state law of Arizona are preempted by the federal law:

1/8 Section 44-287 B.5--Disclosure of final cash price balance. This provision is preempted in those transactions in which the amount of the final cash price balance is the same as the federal amount financed, since in such transactions, the state law requires the use of a term different from the federal term to represent the same amount.

1/8 Section 44-287 B.6--Disclosure of finance charge. This provision is preempted in those transactions in which the amount of the finance charge is different from the amount of the federal finance charge, since in such transactions, the state law requires the use of the same term as the federal law to represent a different amount.

1/8 Section 44-287 B.7--Disclosure of the time balance. The time balance disclosure provision is preempted in those transactions in which the amount is the same as the amount of the federal total of payments, since in such transactions, the state law requires the use of a term different from the federal term to represent the same amount.

9. Preemption determination--Florida. Effective October 1, 1983, the Board has determined that the following provisions in the state law of Florida are preempted by the federal law:

1/8 Sections 520.07(2)(f) and 520.34(2)(f)--Disclosure of amount financed. This disclosure is preempted in those transactions in which the amount is different from the federal amount financed, since in such transactions, the state law requires the use of the same term as the federal law to represent a different amount.

1/8 Sections 520.07(2)(g), 520.34(2)(g), and 520.34(2)(d)--Disclosure of finance charge and a description of its components. The finance charge disclosure is preempted in those transactions in which the amount of the finance charge is different from the federal amount, since in such transactions, the state law requires the use of the same term as the federal law to represent a different amount. The requirement to describe or itemize the components of the finance charge, which is also included in these provisions, is not preempted.

1/8 Sections 520.07(2)(h) and 520.34(2)(h)--Disclosure of total of payments. The total of payments disclosure is preempted in those transactions in which the amount differs from the amount of the federal total of payments, since in such transactions, the state law requires the use of the same term as the federal law to represent a different amount than the federal law.

1/8 Sections 520.07(2)(i) and 520.34(2)(i)--Disclosure of deferred payment price. This disclosure is preempted in those transactions in which the amount is the same as the federal total sale price, since in such transactions, the state law requires the use of a different term than the federal law to represent the same amount as the federal law.

10. Preemption determination--Missouri. Effective October 1, 1983, the Board has determined that the following provisions in the state law of Missouri are preempted by the federal law:

1/8 Sections 365.070-6(9) and 408.260-5(6)--Disclosure of principal balance. This disclosure is preempted in those transactions in which the amount of the principal balance is the same as the federal amount financed, since in such transactions, the state law requires the use of a term different from the federal term to represent the same amount.

1/8 Sections 365.070-6(10) and 408.260-5(7)--Disclosure of time price differential and time charge, respectively. These disclosures are preempted in those transactions in which the amount is the same as the federal finance charge, since in such transactions, the state law requires the use of a term different from the federal law to represent the same amount.

1/8 Sections 365.070-2 and 408.260-2--Use of the terms "time price differential" and "time charge" in certain notices to the buyer. In those transactions in which the state disclosure of the time price differential or time charge is preempted, the use of the terms in this notice also is preempted. The notice itself is not preempted.

1/8 Sections 365.070-6(11) and 408.260-5(8)--Disclosure of time balance. The time balance disclosure is preempted in those transactions in which the amount is the same as the amount of the federal total of payments, since in such transactions, the state law requires the use of a different term than the federal law to represent the same amount.

1/8 Sections 365.070-6(12) and 408.260-5(9)--Disclosure of time sale price. This disclosure is preempted in those transactions in which the amount is the same as the federal total sale price, since in such transactions, the state law requires the use of a different term from the federal law to represent the same amount..

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Section 226.29 State exemptions.

29(a) General Rule

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4. Exemptions granted. Effective October 1, 1982, the Board has granted ***4677** the following exemptions from portions of the revised Truth in Lending Act:

1/8 Maine. Credit or lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from chapters 2, 4 and 5 of the federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor of lessor.)

1/8 Connecticut. Credit transactions subject to the Connecticut Truth in Lending Act are exempt from chapters 2 and 4 of the federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)

; Massachusetts. Credit transactions subject to the Massachusetts Truth in Lending Act are exempt from chapters 2 and 4 of the federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)

1/8 Oklahoma. Credit or lease transactions subject to the Oklahoma Consumer Credit Code are exempt from chapters 2 and 5 of the federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor or lessor.)

1/8 Wyoming. Credit transactions subject to the Wyoming Consumer Credit Code are exempt from chapter 2 of the federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.).

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Appendix D--Multiple-Advance Construction Loans

1. General rule. Appendix D provides a special procedure that creditors may use, at their option, to estimate and disclose the terms of multiple-advance construction loans when the amounts 5and6 ;or. timing of advances are unknown at consummation of the transaction. This appendix reflects the approach taken in § 226.17(c)(6)(ii), which permits creditors to provide separate or combined disclosures for the construction period and for the permanent financing, if any; i.e., the construction phase and the permanent phase may be treated as one transaction or more than one transaction. ;Appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or time of advances are unknown at consummation..

2. Variable-rate 5construction ;multiple-advance. loans. The hypothetical disclosure required in most variable-rate transactions by § 226.18(f)(4) is not required for multiple-advance 5construction loans disclosed pursuant to Appendix D, Part I.

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References

1981 changes: The use of Appendix D is limited to multiple-advance loans for construction purposes for analogous types of transactions.

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Appendix H--Closed-End Model Forms and Clauses

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<<triangle>>17. HRSA-500-1 9-82. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-500-1 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all Health Education Assistance Loans (HEAL) with a variable interest rate that are interim student credit extensions as defined in Regulation Z.

18. HRSA-500-2 9-82. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-500-2 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate that are interim student credit extensions as defined in Regulation Z.

19. HRSA-502-1 9-82. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-502-1 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a variable interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

20. HRSA-502-2 9-82. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-502-2 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.<< triangle>>

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By order of the Board of Governors of the Federal Reserve System, January 27, 1983.

William W. Wiles,

Secretary of the Board.

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