

FEDERAL RESERVE BANK
OF NEW YORK

Circular No. 7628
May 9, 1975

REGULATION Z
Proposed Fair Credit Billing Amendments

To All Banks, and Others Concerned,
in the Second Federal Reserve District:

Following is the text of a statement issued April 30 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today published for comment draft regulations to implement the new Fair Credit Billing Act, enacted to protect consumers against inaccurate and unfair credit billing and credit card practices.

The new Act, which goes into effect on October 28, amends the Truth in Lending Act. It directs the Federal Reserve to issue implementing regulations which will be enforced by the same Federal agencies which enforce the other parts of the Truth in Lending Act. Following receipt and study of comment on the draft regulations, the Board will issue final regulations to become effective October 28. Comment should be received by the Board through May 30.

Today's action was the second time in two weeks that the Board issued draft regulations to implement new consumer-oriented legislation for which the Congress designated the Board as rule-writing authority. Last week the Board published for comment a proposed regulation to give effect to the provisions of the Equal Credit Opportunity Act barring discrimination in the granting of credit on the basis of sex or marital status. That Act and the Board's final regulations also go into effect October 28.

Credit extended on an account by use of a credit card is the primary subject of the requirements of the Fair Credit Billing Act. The chief purpose of the Act, and of the Board's draft regulations, is to help consumers resolve credit billing disputes promptly and fairly. Certain practices deemed unfair to consumers arising out of the use of credit cards or other open-end credit accounts and certain anticompetitive practices between credit card issuers and the retail merchants who sell merchandise on the basis of such cards, are prohibited by the Act and regulations.

The central provisions of the draft regulations issued today are:

1. Billing error resolution:

A billing error is any of six specified categories of acts or omissions by the creditor. To trigger the resolution procedure the customer must send a proper written notification of a billing error. This must contain the customer's name, the account number, if any, and the customer's statement of what error he thinks has been made and the estimated amount involved.

Upon receipt of proper written notification, the creditor must acknowledge the inquiry within 30 days and resolve the dispute in no more than 90 days. The creditor may not, meanwhile, impose finance charges on the disputed amount or include the disputed amount in any calculation of the customer's minimum payment. The customer's account may not be closed because he fails to pay an amount he believes to be incorrect. The creditor may not report adversely on the customer's credit standing with regard to amounts in dispute nor threaten to make such a report until the creditor has complied with his responsibilities under the error resolution procedure. Failure to comply subjects the creditor to a forfeiture of the disputed amount, up to \$50, regardless of whether an error has been made.

(Over)

2. Rights of the cardholder to assert claims:

The credit-card holder may withhold payment, and assert legal claims with respect to shoddy or defective merchandise or services purchased with a credit card (with certain exceptions and limitations) against the card issuer, following an unsuccessful attempt to resolve the problem with the merchant.

3. Discounts for cash payment:

The card issuers may not forbid merchants to give discounts for cash payments. Customers must be notified of the availability of such discounts if they are offered. Discounts of up to 5 per cent do not constitute finance charges to credit-card users.

4. Payment crediting:

Payments must be credited as of the date of receipt, whether they are posted then or later.

5. Disclosure of rights:

Creditors must disclose to customers an address to which billing inquiries may be sent. Creditors are required to send to their customers a semi-annual statement of the customer's rights and the creditor's responsibilities under the Act.

6. Billing period:

Customers must be billed at least 14 days before the end of any billing period allowed by the creditor in which the customer can avoid additional finance charges or late-payment charge.

Enclosed is a copy of the proposal. Comments thereon should be submitted by May 30, 1975, and may be sent to our Bank Regulations Department.

Additional copies of this circular and the enclosure will be furnished upon request.

ALFRED HAYES,
President.

FEDERAL RESERVE SYSTEM

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[REG. Z]

[12 C.F.R. PART 226]

Truth in Lending

Fair Credit Billing Amendments

In order to implement the amendments to the Truth in Lending Act (15 U.S.C. Chapter 41, §§ 1601-1681) included in Title III - (Fair Credit Billing) of Pub. L. 93-495 (§ 301-308), the Board proposes to amend Regulation Z. These amendments would provide:

- (1) that the term "creditor" as defined in the regulation shall include credit card issuers for certain purposes, whether or not a finance charge is imposed, and the term "open end credit" shall include consumer credit extended by use of a credit card for certain limited purposes.
- (2) that, for certain limited purposes, persons who honor credit cards shall be termed "creditors" as defined by the regulation.
- (3) that discounts not in excess of 5% offered by sellers to induce purchasers to pay by cash rather than by use of a credit card are not finance charges if they are available to all prospective purchasers and are disclosed as required in the regulation.
- (4) that customers shall be apprised of their rights under the Act and the regulation by the creditor when they open an account, or, in the case of accounts in existence on the effective date of the Act and regulation, during the first billing cycle in which they are active, and semiannually. A form for this disclosure is provided in the regulation.
- (5) that a periodic statement must be sent to all customers of an open end credit plan if there is a debit or credit balance in the account during the cycle. If the plan provides a period during which the customer can pay without incurring a finance or late payment charge, the periodic statement must be mailed or delivered to the customer, with some exceptions, 14 days prior to the end of the period.

- (6) that payments by a customer of an open end credit plan must be credited to the account as of the date the payment is received by the creditor. This requirement would relate only to the crediting of payments to the account as of the day of receipt for the purpose of the computation of finance charges and late payment charges; it would not impose any requirements with respect to the date on which physical posting of payments to the account takes place.
- (7) that notification of refunds for returned merchandise or forgiven debt for services which are to be made in the form of a credit to a customer's credit card account shall be made promptly by the seller and the amount of the refund shall be credited promptly by the card issuer. If a seller gives refunds for returns by cash to cash customers, refunds by credit must be given to credit card customers unless the seller discloses to the contrary at the time of the transaction.
- (8) that creditors who extend other than open end credit by use of a credit card shall, for certain purposes under the regulation, be required to comply with provisions which generally apply only to open end
- (9) that, with certain exceptions and limitations, credit cardholders will be able to withhold payment and assert claims and defenses which they may have with respect to defective merchandise purchased by use of a credit card against the card issuer.
- (10) that credit card issuers may not offset a customer's debt by using the customer's funds held by the creditor in any deposit accounts except by court order or remedies which are constitutionally available to all creditors generally.
- (11) that credit card issuers shall not require persons who honor their cards to open accounts with, or procure any services from, them; nor shall they prohibit persons who honor their cards from offering discounts to their customers to induce them to pay by cash rather than by use of a credit card.
- (12) a procedure for prompt response to, and resolution of, billing inquiries by customers directed to open end creditors, as defined in the regulation. The regulation sets time limits for the exercise of the responsibilities of the parties and provides a forfeiture penalty for creditors who fail to comply with the requirements.

- (13) a definition of a "billing error," which includes extensions of credit improperly charged to a customer's account; requests for clarification or explanation of items on a statement, including requests for documentary evidence of the indebtedness; extensions of credit for goods not accepted by, or delivered to, the customer in accordance with the agreement with the seller; failure to properly reflect payments or credits to the customer's account; computation or accounting errors; and failure to send a statement to the customer's current address.
- (14) a procedure for preventing bank credit card issuers from automatically debiting credit card debts from a customer's deposit account when some or all of the items on a periodic statement are disputed by the customer.
- (15) that a customer's account may not be closed or restricted before the creditor has fulfilled its responsibilities under the error resolution procedure solely because the customer fails to pay the amount in dispute.
- (16) for suspension of the accrual of finance charges on amounts in dispute during the pendency of the error resolution procedure, whether or not the dispute is ultimately resolved in the customer's favor; and for recapture of minimum payments not made during the dispute period if it is later determined that the customer owes some or all of the disputed amount.
- (17) a system for treatment of delinquency credit reports and threats by creditors to report adversely to third parties with respect to amounts which are disputed. The regulation prohibits such threats and reports during the pendency of the dispute resolution procedure and requires qualification of such reports made before and after the resolution process to indicate the disputed nature of the amount and any resolution of the dispute. Creditors' failure to comply with these requirements may also result in a forfeiture penalty being imposed.

Pursuant to the authority granted in 15 U.S.C. § 1604 (1970), the Board proposes to amend Regulation Z, 12 C.F.R. Part 226, as follows:

1. To implement § 302, § 226.1(a) would be amended as follows:

§ 226.1--AUTHORITY, SCOPE, AND PURPOSE, ETC.

(a) Authority, scope, and purpose. (1) This Part comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to Title I (Truth in Lending Act) and Title V (General Provisions) of the Consumer Credit Protection Act, as amended (15 U.S.C. § 1601 et seq.). Except as otherwise provided herein, this Part, within the context of its related provisions, applies to all persons who are creditors, as defined in paragraph (s) of § 226.2.

(2) * * * * * In addition, this Part is designed to assist the customer to resolve credit billing disputes in a fair and timely manner, to regulate certain billing and credit card practices, and to strengthen the legal rights of consumers. * * * * *

2. To implement §§ 103 and 161, § 226.2 would be amended and certain subsections redesignated as follows:

§ 226.13(a)(1) is redesignated § 226.2(a)

§ 226.2(a) is redesignated § 226.2(b).

§ 226.13(a)(2) is redesignated § 226.2(c).

§ 226.2(b) is redesignated § 226.2(d).

§ 226.2(c) is redesignated § 226.2(e).

§ 226.2(d) is redesignated § 226.2(f).

§ 226.2(e) is redesignated § 226.2(g).

§ 226.2(f) is redesignated § 226.2(h), and the structure has been altered to make the subsection more readable.

§ 226.2(g) is redesignated § 226.2(i)

§ 226.2(j) is added.

§ 226.2(h) is redesignated § 226.2(k).

§ 226.13(a)(4) is redesignated § 226.2(l).

§ 226.13(a)(3) is redesignated § 226.2(m).

§ 226.2(i) is redesignated § 226.2(n).

§ 226.2(j) is redesignated § 226.2(o).

§ 226.2(k) is amended and is redesignated § 226.2(p).

§ 226.2(l) is amended and is redesignated § 226.2(q).

§ 226.13(a)(5) has been incorporated in § 226.2(q).

§ 226.13(a)(6) is redesignated § 226.2(r).

§ 226.2(m) is amended and is redesignated § 226.2(s)

§ 226.2(n) is redesignated § 226.2(t).

§ 226.2(o) is amended and is redesignated § 226.2(u).

§ 226.2(p) is redesignated § 226.2(v).

- § 226.2(q) is redesignated § 226.2(w).
- § 226.2(r) is amended and is redesignated § 226.2(x).
- § 226.2(s) is redesignated § 226.2(y).
- § 226.2(t) is redesignated § 226.2(z).
- § 226.2(u) is redesignated § 226.2(aa).
- § 226.2(v) is redesignated § 226.2(bb).
- § 226.2(cc) is added.
- § 226.2(w) is redesignated § 226.2(dd).
- § 226.2(x) is redesignated § 226.2(ee).
- § 226.2(y) is redesignated § 226.2(ff).
- § 226.2(z) is redesignated § 226.2(gg).
- § 226.2(aa) is redesignated § 226.2(hh).
- § 226.13(a)(7) is redesignated § 226.2(ii).
- § 226.2(bb) is redesignated § 226.2(jj).
- § 226.2(cc) is redesignated § 226.2(kk), and
- § 226.2(dd) is redesignated § 226.2(ll).

* * * * *

§ 226.2-- DEFINITIONS AND RULES OF CONSTRUCTION

* * * * *

(h) "Arrange for the extension of credit" means to provide or offer to provide consumer credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit

- (1) receives or will receive a fee, compensation, or other consideration for such service, or

- (2) has knowledge of the credit terms and participates in the preparation of the contract documents required in connection with the extension of credit.

It does not include honoring a credit card or similar device where no finance charge is imposed at the time of that transaction.

(j) "Billing error" includes:

* * * * *

- (1) A reflection on a periodic statement of an extension of credit which was not made to the customer or from which he receives no benefit, or, if made, was not in the amount indicated on the periodic statement, or
- (2) A reflection on a periodic statement of an extension of credit or indebtedness for which the customer requests explanation or clarification, including requests for documentary evidence of the indebtedness reflected therein, or
- (3) A reflection on a periodic statement of an extension of credit for goods or services not accepted^{1/} by the customer or his designee, or not delivered to the customer or his designee in accordance with any agreement made in connection with the transaction, or
- (4) Any failure to properly reflect on a periodic statement, a payment or other credit to the customer's account, or

^{1/} The term "accepted" shall be construed to mean "acceptance" as defined in § 2-606 of the Uniform Commercial Code.

- (5) A computation error or similar error of an accounting nature made by the creditor on a periodic statement, including errors in computing finance charges or late payment charges, or
- (6) A failure to mail or deliver a customer's periodic statement to his current address, which results in an additional finance charge or additional minimum payment, if the customer notified the creditor of his change of address by the closing date of the previous billing cycle.

* * * * *

(p) "Consumer credit" means credit offered or extended to a natural person, in which the money, property, or service which is the subject of the transaction is primarily for personal, family, household, or agricultural purposes. "Consumer loan" is one type of "consumer credit."

* * * * *

(q) "Credit" means the right granted by a creditor to a customer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor. (See also paragraph (jj) of this section.)

* * * * *

(s) "Creditor" means a person who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit, which is payable by agreement in more than four instalments, or for

which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise. For purposes of the requirements of §§ 226.7(a)(6), (7), (8), and (9); 226.7(b)(1)(i), (ii), (iii), (ix), and (x); 226.7(b)(2); 226.7(c), (d), (f), (g), (h), and (i); 226.13; and 226.14, the term "creditor" shall also include card issuers, whether or not the payment of a finance charge is or may be required. For purposes of the requirements of § 226.4(i) and 226.13(k), the term "creditor" shall include any person who honors a credit card.

* * * * *

(u) "Customer" means (1) a cardholder or (2) a natural person to whom consumer credit is offered or to whom it is or will be extended, and includes a comaker, endorser, guarantor, or surety for such natural person who is or may be obligated to repay the extension of consumer credit.

* * * * *

(x) "Open end credit" means consumer credit extended on an account pursuant to a plan under which (1) the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide; (2) the customer has the privilege of paying the balance in full or in instalments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. For purposes of the requirements of §§ 226.7(a)(6), (7), (8), and (9); 226.7(b)(1)(i), (ii), (iii), (ix), and (x); 226.7(b)(2); 226.7(c) (d), (f), (g), (h), and (i); 226.13; and 226.14, the term includes consumer credit extended on an account by use of a credit card, whether or not a finance charge may be imposed. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(cc) "Proper written notification of a billing error" is any written notification (on a payment medium or other material accompanying the periodic statement or on a separate sheet, if the creditor so stipulates in the disclosure required by § 226.7(a)(9), (d), and (j)), received at the address disclosed under § 226.7(b)(1)(x) within 60 days of the first mailing or delivering to the customer's current address (as required in § 226.7(b)) of the periodic statement on which the disputed item(s) or amount(s) is reflected in which the customer

- (1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the customer,
- (2) indicates the customer's belief that the periodic statement contains a billing error and the suspected amount of such error, and
- (3) sets forth the reasons for such belief, to the extent possible.

3. Footnote in § 226.3 would be redesignated as follows:

Footnote 1/ is redesignated 1a/.

4. To implement § 167, § 226.4(i) would be added as follows:

§ 226.4--DETERMINATION OF FINANCE CHARGE

* * * * *

(i) Discounts for payments in cash. (1) Notwithstanding any other provision of this section, a discount which a person offers, allows, or otherwise makes available 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, is not a finance charge, provided that:

(1) Such discount does not exceed five per cent when computed or expressed as a percentage of the tag, posted, or advertised price of the goods or services which are the subject of the transaction,

(ii) Such discount is available to all prospective buyers,

(iii) The availability of such discount is clearly and conspicuously disclosed to all prospective buyers by a sign or display posted at or near each public entrance to the seller's place of business wherein such discount is offered, and at all locations within the place of business where a purchase may be made, and

(iv) If an offer of sale is advertised in any medium or if offers to buy are invited or allowed by a seller to be made by mail, telephone, or by means other than personal contact between the

customer and seller and if customers are allowed to pay by use of a credit card or its underlying account and such fact is disclosed by the advertisement, telephone contact, or in the course of the mail correspondence, the availability of a discount for payments in cash must be clearly and conspicuously disclosed in any advertisement for such offerings and, in any case, before the transaction has been completed by use of the credit card or its underlying account.

(2) Notwithstanding anything contained in the foregoing paragraph to the contrary, any surcharge added to the tag, posted, or otherwise generally available price of goods or services offered for sale by a seller, which is imposed by such seller as a condition or consequence of the use of the credit card with respect to a transaction involving such goods or services, shall be a finance charge subject to the requirements of this section.

(3) With respect to any discount for cash in excess of five per cent, the total amount of the discount shall constitute a finance charge under § 226.4(a) to be disclosed in accordance with § 226.7(e).

5. To implement § 171(a) and to provide a transition period for the use of old forms, § 226.6 would be amended as follows:

§ 226.6--GENERAL DISCLOSURE REQUIREMENTS

(b) Inconsistent State requirements. (1) With respect to the requirements of this Part, State law is inconsistent with the requirements of the Act and this Part, within the meaning of §§ 111(a) and 171(a) of the Act to the extent that it:

(i) Requires a creditor to make disclosures or take actions different from the requirements of this Part with respect to form, content, terminology, or time of delivery;

(ii) * * * * *, or

(iii) * * * * *

(2) If any provision of State law provides greater protection to the consumer than that provided by Chapter 4 of the Act, then that provision of State law is not inconsistent with the provisions of the Act or this Part.

* * * * *

(k) Transition period. Any creditor who can demonstrate that he has taken bona fide steps, prior to October 28, 1975, to obtain printed forms which are necessary to comply with the requirements of this Part may, until such forms are received but in no event later than April 30, 1976, utilize existing supplies of printed forms for the purpose of complying with the disclosure requirements of this Part, other than the requirements of paragraphs (a)(9), (d), and (i) of § 226.7, Provided, that such forms are altered or supplemented as necessary to assure that all of the items of information the creditor is required to disclose to the customer are set forth clearly and conspicuously.

6. To implement §§ 127(a)(8), 127(b)(11), 127(c), 163, 164, 165, and 167, § 226.7 is amended as follows:

Section 226.7(b), paragraphs (1) through (9), are redesignated (i) through (ix).

Section 226.7(d) and (e) are redesignated (e) and (f) respectively.

§ 226.7--OPEN END CREDIT ACCOUNTS--SPECIFIC DISCLOSURES.

(a) Opening new account.

* * * * *

(9) The following notice: "Notice: See accompanying statement for important information regarding your rights to dispute billing errors," and a separate statement containing substantially the following text, as applicable, written clearly and conspicuously on one side of a separate page, shall accompany such a statement; or the language without the preceding notice may be included on the statement required by paragraph (a) of this section if disclosed clearly and conspicuously:

IN CASE OF ERRORS ON YOUR BILL

The Federal Truth in Lending Act requires prompt correction of billing mistakes. Here's what to do if you think your bill is wrong or if you need more information about an item on your bill:

1. Don't write on the bill. On a separate sheet of paper write (you may telephone your inquiry but doing so will not preserve your rights under this law) the following:
 - a) Your name and account number (if any).
 - b) Describe the error and why (to the extent you can) you believe it is an error.

If you only need more information, explain the item you are not sure about, and if you wish, ask for evidence of the charge such as a copy of the sales slip. Don't send in your copy of a sales slip or other document unless you have a duplicate copy for your records.
 - c) The dollar amount of the suspected error if you can.
 - d) Any other information (such as your address) which you think will help the company (bank) to identify you or the reason for your complaint or inquiry.

2. Send your billing error notice to the address on your bill which is listed after the words: "Send Inquiries To:"

Mail it as soon as you can, but in any case early enough to reach the company (bank) within 60 days after the bill was mailed to you.

If your bank automatically pays these bills from your checking or savings account, you can stop payment on the amount you think is wrong by mailing your notice within 10 days after receiving your bill. You don't have to meet this 10 day deadline, though, to get your bill corrected.

3. The company (bank) must answer all letters pointing out possible errors and must do so within 30 days. Within 90 days after receiving your letter, the company (bank) must either correct the error or show why the bill was correct.
4. Meanwhile, neither the company (bank) nor its attorney nor a collection agency may send you dunning letters. You cannot be threatened with damage to your credit rating or sued for the amount in question, nor can the disputed amount be reported to a credit bureau or to other creditors as delinquent.
5. If it is determined that you owe all or a part of the disputed amount, you will have to pay any finance charges on the disputed amount(s) that you owe up to the time you sent the error notice. But no finance charges may be imposed on the amount in dispute from the time your notice is received until the error is resolved. You will have to make up any missed minimum payments from the time you received the bill on which the suspected error first appeared. The company (bank) must send you a statement of what you owe, and you must be given the same time to pay which you normally are given to pay undisputed amounts.
6. If the company's (bank's) explanation doesn't satisfy you and you notify the creditor in writing that you still refuse to pay the disputed amount, the company (bank) may report you to credit bureaus and other creditors. But it must tell them that you don't think you owe the money, and it must let you know to whom it has reported you. Once the matter has been settled between you and the company (bank), it must send follow-up notices to those to whom it reported you as delinquent.
7. Companies (banks) that don't follow these rules are not allowed to collect the first \$50 of a disputed amount, even if the bill turns out to be correct.
8. You may have good grounds in a law suit for withholding payment of the amount you still owe for merchandise or services that prove defective if three conditions are met:
 - (1) you must first give the merchant an opportunity to correct the problem;
 - (2) you must have made the purchase in your home state or within 100 miles of your home (whichever is farther); and
 - (3) the purchase price must be more than \$50.

However, the dollar and distance limitations do not apply if the merchant and the credit card company are the same or a related organization, or if the credit card company participated in offering the merchandise or services through the mail.

(b) Periodic statements required. (1) Except in the case of an account which the creditor deems to be uncollectable or with respect to which delinquency collection procedures have been instituted, the creditor of any open end credit account shall mail or deliver to the customer's current address (if the customer has notified the creditor of his change of address by the closing date of the previous billing cycle), for each billing cycle at the end of which there is an outstanding debit or credit balance in excess of \$1 in that account or with respect to which a finance charge is imposed, a statement or statements which the customer may retain, setting forth in accordance with paragraph (c) of this section each of the following items to the extent applicable:

* * * * *

(iii) The amounts posted to the account during the billing cycle for payments, using the term "payments," and for other credits including returns, rebates of finance charges, overpayments, and adjustments, using the term "credits," and unless previously furnished a brief identification of each of the items included in such other credits.

* * * * *

* (v) Each periodic rate, using the term "periodic rate" (or "rates"), that may be used to compute the finance charge (whether or not applied during the billing cycle), the range of balances to which it is applicable, 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" (or "rates") may be used to describe the corresponding annual percentage rate. The requirements of § 226.6(a) of this Part with respect to disclosing the term "annual percentage rate" more conspicuously than other required terminology shall not be applicable to the disclosure made under this paragraph, although such term (or words incorporating such term) may, at the creditor's option, be shown as conspicuously as the terminology required under subparagraph (vi) of this paragraph. Where a minimum charge may be applicable to the account, the amount of such minimum charge shall be disclosed. ^{9a/}

* * * * *

- (ix) The closing date of the billing cycle and the outstanding balance in the account on that date, using the term "new balance," accompanied by the statement of the date by which, or the period, if any, within which, payment must be made to avoid additional finance charges or late payment charges.

(x) An address to be used by the creditor for the purpose of receiving billing inquiries from customers. Such address shall be preceded by the caption: "Send Inquiries To:".

(2) If the terms of the open end credit plan provide a time period within which the customer may repay any portion of the new balance without incurring an additional finance charge or a late payment charge, no such charge may be imposed with respect to any portion of such new balance unless the periodic statement disclosing such new balance is mailed or delivered to the customer's current address (if the customer has notified the creditor of his change of address by the closing date of the previous billing cycle) at least 14 days prior to the date specified in the statement as being the date by which payment must be made in order to avoid the imposition of that finance charge or late payment charge, except that such time limitation shall not apply in any case where the creditor has been prevented, delayed, or hindered in mailing or delivering such periodic statement within such time limit because of an act of God, war, civil disorder, natural disaster, or strike.

*(c) Location of disclosures.

* * * * *

(3) * * * * * The disclosure required by subparagraph (b)(1)(x) of this section may be made on the reverse side of the periodic statement.

* * * * *

(d) Semiannual notice required. (1) The creditor shall mail or deliver semiannually to each customer entitled to receive a periodic statement under § 226.7(b), the notice required by § 226.7(a)(9), written clearly and conspicuously on one side of a separate page or included with the disclosures required by paragraph (b) of this section if disclosed clearly and conspicuously.

(2) The semiannual notice shall be mailed or delivered not less than 5 nor more than 7 months after the month in which the last preceding such notice was mailed or delivered, provided that,

(i) in any case the creditor shall mail or deliver such notices at least twice in any 12 month calendar period, and

(ii) the first semiannual notice to any new customer may be mailed or delivered to that customer during the next regularly scheduled mailing or delivery of semiannual notices.

(3) If the creditor chooses to alter the cycle of mailing or delivering semiannual notices, the creditor may mail or deliver the semiannual notice less than 5 months after the last preceding such notice was mailed or delivered, provided that the creditor mails or delivers at least 3 such notices in the next twelve months computed from the month in which the last preceding semiannual notice was mailed or delivered.

(4) Nothing in this subsection shall be construed to prohibit a creditor from mailing or delivering the notice required by this subsection more frequently than semiannually, such as monthly.

(e) Finance charge imposed at the time of transaction.

Any creditor, other than the creditor of the open end credit account, who imposes a finance charge not excepted by § 226.4(i), Discounts for payment in cash, at the time of honoring a customer's credit card, shall make the disclosures required under paragraphs (b)(2) and (d) of § 226.8, Credit other than open end - specific disclosures, at the time of that transaction, and the annual percentage rate to be disclosed shall be determined by dividing the amount of the finance charge by the amount financed and multiplying the quotient (expressed as a percentage) by 12.

* * * * *

(g) Prompt crediting of payments. Regardless of the date of actual posting of payments to an account, any payments shall be credited to the customer's account as of the date such payment is received by the creditor and no finance charge or late payment charge may be imposed with respect to the amount of such payment which is properly received by the creditor on or before the time indicated by the creditor to avoid imposition thereof, except that:

- (1) The creditor may specify reasonable requirements with respect to the form, amount, manner, location, and time of such payments in order that such payments will be credited as of the day of receipt provided that:

(1) If no particular hour of the day has been clearly indicated to the customer on the periodic statement as the time by which payment must be received by the creditor in order to obtain crediting to the customer's account on such date, payments made prior to the close of business on that day must be credited as of that date, and

(ii) If no location(s) has been clearly indicated on the periodic statement as the location(s) at which payment may be made, then payment at any location where the creditor conducts business shall be credited as of the date such payment is presented, and

(iii) If no particular manner of payment has been clearly indicated on the periodic statement, then payment by check, cash, money order, bank draft, or other similar instrument in properly negotiable form shall constitute proper manner of payment.

(2) If the creditor accepts payment at locations other than that indicated as necessary for crediting as of the date of receipt, the creditor must credit the customer's account as of the day payment is received at the alternate location(s), even though the actual posting may occur at a later day.

(h) Crediting and refunding excess payments. (1) Whenever a customer mails or delivers payment to the creditor in excess of the total balance due on the account, the creditor shall

- (i) credit the customer's account with the amount of the overpayment as of the date of receipt as specified in subsection (g) of this section, or
- (ii) if the creditor so elects and, in any case, if the customer has previously requested in writing, promptly (in no case more than 5 business days from receipt of the payment) refund the amount of the overpayment.

(2) Notwithstanding the provisions of paragraph (1), upon receipt of a customer's request, the creditor shall promptly (in no case more than 5 business days from receipt of a customer's request) refund the amount of any overpayment(s).

(i) Open end credit accounts existing on October 28, 1975.

In the case of any open end credit account in existence and in which a balance of more than \$1 remains unpaid at or after the closing date of the creditor's first full billing cycle after October 28, 1975, and which balance is deemed to be collectible and not subject to delinquency collection procedures, the items described in paragraph (a) of this section, to the extent applicable and not previously disclosed to the customer, shall be disclosed in the form prescribed in paragraph (a) of this section, and mailed or delivered to the customer not later than the time of mailing or delivery of the periodic statement required under subsection (b) of this section for that billing cycle.

7. To implement § 103(f) and to clarify certain disclosure requirements with respect to credit other than open end which is extended on an account by use of a credit card, § 226.8 is amended as follows:

§ 226.8--CREDIT OTHER THAN OPEN END--SPECIFIC DISCLOSURES

* * * * *

(n) Periodic statements. (1) If a creditor transmits a periodic billing statement ^{13/} other than a delinquency notice, payment coupon book, or payment passbook, or a statement, billing, or advice relating exclusively to amounts to be paid by the customer as escrows for payment of taxes, insurance, and water, sewer, and land rents, it shall be in a form which the customer may retain and shall set forth

(i) The annual percentage rate or rates unless exempted by § 226.8(b)(2); and

(ii) The date by which, or the period, if any, within which payment must be made in order to avoid late payment or delinquency charges.

(2) If the creditor is required to send a periodic statement under subsection (q) of this section, the disclosures required by § 226.7(b)(1)(i), (ii), (iii), (ix), and (x), and § 226.7(b)(2) shall be made in addition to the disclosures required by this subsection.

* * * * *

(q) Credit card accounts. In addition, to the requirements of this section credit other than open end which is extended on an account by use of a credit card shall also be subject to the requirements of §§ 226.7(a)(6) (7), (8), and (9); 226.7(b)(1)(i), (ii), (iii), (ix), and (x); 226.7(c), (d), (g), (h), and (i); 226.13; and 226.14, to the extent not required by other portions of this section.

8. To implement § 171, § 226.12 is amended as follows:

§ 226.12--EXEMPTION OF CERTAIN STATE REGULATED TRANSACTIONS

(a) Exemption for State regulated transactions. In accordance with the provisions of Supplements II, IV, and V to Regulation Z, any State may make application to the Board for exemption of any class of transactions within the State from the requirements of Chapters 2 and 4 of the Act and the corresponding provisions of this Part, provided, that:

1. The Board determines that, under the law of that State, that class of transactions is subject to requirements substantially similar to those imposed under Chapter 2 or Chapter 4 of the Act or both and the corresponding provisions of this Part; or in the case of Chapter 4, the consumer is afforded greater protection than is afforded under Chapter 4 of the Act, and
2. There is adequate provision for enforcement.

(b) Procedures and criteria. The procedures and criteria under which any State may apply for the determination provided for in paragraph (a) of this section are set forth in Supplement II to Regulation Z with respect to disclosure and rescission requirements (§§ 121-131 of Chapter 2), Supplement IV with respect to the prohibition of the issuance of unsolicited credit cards and the liability of the cardholder for unauthorized use of a credit card (§ 132-133 of Chapter 2), and in Supplement V which will be issued on or before October 28, 1975, with respect to fair credit billing requirements (§§ 161-171 of Chapter 4).

9. To implement §§ 166, 167, 168, 169, and 170, § 226.13 is amended as follows:

Subsection (a) is incorporated into § 226.2.

Subsection (b) through (h) are redesignated (a) through (g).

§ 226.13--CREDIT CARD TRANSACTIONS--SPECIAL REQUIREMENTS

* * * * *

(i) Right of cardholder to assert claims or defenses against card issuer. (1) When a person who sells property or services fails to satisfactorily resolve a dispute as to defective property or services purchased by use of a credit card, the cardholder may assert all claims^{16/} and defenses arising out of the transaction and relating to such failure against the card issuer who has issued the credit card if:

- (i) the customer has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card,
- (ii) the amount of credit extended by the card issuer to the customer to purchase the property or services which resulted in the assertion of the claim or or defense by the customer exceeds \$50, and
- (iii) The initial transaction which gave rise to the assertion of the claim or defense by the customer occurred in the same State as the mailing address

16/ These claims shall not include tort claims or contract claims of damages to person or property resulting from the merchant's failure to resolve a dispute as to defective property or services. The exclusion of tort claims is not intended to defeat the assertion of claims that could alternatively be pleaded in tort or contract.

previously provided by the cardholder or within 100 miles from such address (whichever is greater), except that the limitations stated in subparagraphs (ii) and (iii) shall not apply when the person honoring the credit card:

- (A) is the same person as the card issuer, or
- (B) is controlled, directly or indirectly, by the card issuer, or
- (C) is under the direct or indirect control of a third person who also directly or indirectly controls the card issuer, or
- (D) is a franchised dealer in the card issuer's products or services, or
- (E) has obtained the order for the transaction relative to which the claim(s) or defense(s) is asserted through a mail solicitation made by or participated in ^{17/} by the card issuer, in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer, or
- (F) controls, directly or indirectly, the card issuer.

(2) The amount of the claims or defenses assertable by the cardholder under this subsection may not exceed the amount of credit outstanding with respect to the transaction which gave rise to the assertion of the claim(s) or defense(s) at the time the cardholder first notifies

^{17/} "Participated in" does not include a mere indication by a person that he honors a particular credit card(s).

the card issuer or the person honoring the credit card for such transaction of the existence of such claim(s) or defense(s). For purposes of determining the amount of credit outstanding with respect to such transactions as provided in the preceding sentence, payments and other credits to the cardholder's account will be deemed to have been applied, in the order indicated, to the payment of:

- (i) late charges in the order of entry to the account;
- (ii) finance charges in the order of entry to the account;
- (iii) any other debits in the order in which each debit entry was made to the account; and
- (iv) 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.

(3) This subsection does not apply to cash advances obtained with a credit card when the advance is obtained from the card issuer and is unrelated to any specific credit sale item.

(j) Prohibition of offsets by card issuer. (1) A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan or underlying account against funds of the cardholder held on deposit with the card issuer unless a court order is obtained. ^{18/}

(2) The prohibition in paragraph (1) of this subsection does not apply to credit card plans whereby the cardholder authorizes the card issuer as a method of payment to periodically deduct all or a portion

^{18/} This paragraph does not alter or affect the right of a card issuer acting under State law to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

of the cardholder's credit card debt from his deposit account (subject to the limitations in § 226.14(a)(2)), provided that,

- (i) such automatic debit was previously authorized in writing by the cardholder, or
- (ii) with respect to such automatic debit accounts in existence on October 28, 1975, the creditor has given notice of the provisions of subsection (j) of this section to such accounts prior to renewal of the authorization (in no case later than October 28, 1976).

(k) Prompt notification of returns. (1) When any person accepts the return of property or forgives a debt for services which is to be reflected as a credit to the customer's credit card account, he shall promptly (in no case later than 3 business days from the date the return is agreed to) mail or deliver to the card issuer a credit statement with respect thereto in the manner, time, and location indicated by the card issuer as being necessary to immediately credit the customer's account and furnish the customer with a copy of such statement.

(2) Upon receipt of such credit statement, the card issuer shall credit the account of such customer as he would a properly transmitted payment under § 226.7(g). If the card issuer does not indicate a specific manner, time, and location for prompt receipt of credits for returns, then the assumptions in § 226.7(g) will apply.

(3) If it is the seller's policy to give cash refunds to cash customers, he must also give credit refunds to credit card customers, unless he clearly and conspicuously discloses that he does not give credit refunds at the time the purchase transaction is consummated.

(1) Prohibited acts of card issuers. Notwithstanding any existing agreement(s) to the contrary, no card issuer may, by contract or otherwise,

(1) Prohibit any person from offering a discount to all customers of such person, including cardholder customers, to induce such customers to pay by cash, check, or other 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 to open or maintain an account or procure any other service or device from the card issuer, its subsidiary, agent, or any other person, as a condition of participation in a credit card plan.

10. To implement §§ 161, 162, and 170, § 226.14 is added as follows:

§ 226.14 -- BILLING ERRORS-- RESOLUTION PROCEDURE

(a) Correction of billing errors. After the creditor receives proper written notification of a billing error reflected on a periodic statement from a customer, unless the customer has subsequently agreed in writing that the periodic statement is correct, the creditor shall:

(1) Not later than 30 days after receipt of such notification, mail or deliver written acknowledgment thereof to the customer's current address, unless the appropriate actions in paragraph (2) of this subsection are taken within such 30 day period; and

(2) Resolve the dispute not later than 2 complete billing cycles (in no event more than 90 days) from the date of receipt of the notice of billing error and prior to any action by the creditor to collect any portion of the amount(s) indicated by the customer as being in dispute or any finance charges or late payment charges computed on such disputed amount(s) by

(i) making any appropriate corrections in the account of the customer with regard to any disputed amounts erroneously billed, including the crediting of any finance charges or late payment charges imposed upon any amounts erroneously billed, and mailing or delivering to the customer a written notification of corrections;^{19/} or

(ii) correcting the customer's account by a differing amount from that indicated by the customer as being erroneously billed and mailing or delivering to the customer an explanation of the change(s), accompanied by

^{19/} A notice on a subsequent billing statement clearly identifying any amount credited the customer's account pursuant to a billing error notice shall be deemed a proper transmittal of a written notification of corrections.

documentary evidence of the customer's indebtedness as to the amount in dispute, if such evidence is requested by the customer; or

(iii) mailing or delivering a written explanation or clarification to the customer, after having conducted a reasonable investigation setting forth, to the extent applicable, the reasons why the creditor believes the amount(s) was correctly shown on the periodic statement and, if the customer so requests, furnishing copies of any documentary evidence of the customer's indebtedness with respect to a disputed amount.

In any case where the customer alleges that the periodic statement reflects property or services not delivered to the customer or his designee in accordance with any agreement made in connection with the transaction giving rise to the disputed amount, a creditor may not construe such amount to be correctly shown on the billing statement unless the creditor determines, upon reasonable inquiry and investigation, that such property or services were actually delivered, mailed, or otherwise sent to the customer and provides the customer with a written statement explaining such determination. In any case where the customer alleges that an amount of a transaction reflected on the periodic statement is improper because the person honoring the credit

card has made an incorrect report to the card issuer of the amount which should have been charged, the card issuer may not construe such amount to be correctly reflected on the periodic statement unless the creditor determines, upon reasonable inquiry and investigation, that the proper amount is shown on the periodic statement and provides the customer with a written statement explaining such determination.

(b) Minimum payments and finance charges on disputed amounts.

(1) When a customer is permitted to make a minimum payment, he need only make a minimum payment calculated on the basis of amounts not in dispute. When the disputed amount is only a part of the total amount of an item, the customer remains obligated to pay the amount not in dispute, and any minimum payment and finance charges or late payment charges may be calculated on the undisputed amount. If, at the completion of the error resolution procedure, it is determined that the customer owes some or all of the disputed amount, the creditor may require payment of any minimum payment amounts which the customer failed to pay because of the dispute. The creditor may not, however, accelerate the customer's entire debt solely because the customer has exercised rights provided by the Act or this Part.

(2) After the resolution of a dispute, finance charges or late payment charges which could have been imposed on amounts in dispute prior to receipt by the creditor of the proper written notification of a

billing error may be collected, unless:

- (i) it is resolved that the customer owes none of the amount in dispute, in which case no finance charges or late payment charges may be collected for any time on that amount; or
- (ii) it is resolved that the customer owes some of the disputed amount, in which case finance charges or late payment charges for such period may be imposed only on the amount owed.

In no case may finance charges or late payment charges be imposed on disputed amounts during the time the dispute resolution procedure of this section is in process. After the completion of a dispute resolution procedure, as provided in subsection (a) of this section, the creditor shall promptly mail or deliver to the customer a statement of the amount owed by the customer according to the requirements of § 226.7(b)(2).

(3) Nothing in this section shall be construed to prohibit the mailing or delivery of periodic statements to the customer, provided that the creditor indicates to the customer on the face of the periodic statement that payment of the specific amount in dispute is not required pending the creditor's compliance with the provisions of this section.

(4) Nothing in this section shall prohibit any action by a creditor to collect any amount which has not been indicated by the customer to contain a billing error.

(c) Automatic debit of disputed amounts. (1) In the case of credit plans where the cardholder has agreed to permit the card issuer to periodically pay the cardholder's indebtedness by deducting the

appropriate amount from the cardholder's deposit account, the creditor shall not automatically debit any disputed amounts if the customer has mailed or delivered a proper written notification of a billing error within 10 days of receipt of the periodic statement on which the suspected billing error first appears.

(2) Upon receipt of such notification, if the creditor has already automatically debited the customer's account, the creditor shall promptly (in no case no more than one business day after receipt of the notice) restore to the customer's deposit account any portion of the disputed amount which was previously deducted.

(3) Nothing in this subsection shall limit the customer's right to dispute an amount he believes to be in error within 60 days as otherwise provided in this section.

(d) Closing of accounts. A creditor may not, prior to complying with the requirements of subsections (a) and (b) of this section, restrict or close an account with respect to which the customer indicated a belief that such account contains a billing error solely because of the customer's refusal or failure to pay the amount indicated to be in error. This subsection does not prohibit the creditor from applying any such amount to the customer's credit limitation.

(e) Credit reports on amounts in dispute. (1) After receiving a proper written notification of a billing error pursuant to this section, neither the creditor nor his agent may directly or indirectly threaten to report adversely to any person on the customer's credit standing or credit rating because of the customer's failure to pay the amount specified in such notification as being in error or any finance charge imposed on the

disputed amount, nor shall such amount be reported as delinquent to any third person unless such amount remains unpaid after creditor has complied with all the requirements of this section and has allowed that customer the same number of days thereafter as he customarily or by credit agreement allows, whichever is longer (in no case less than 10 days), for the customer to pay undisputed amounts.

(2) If, within the time limit allowed for payment in paragraph (1) of this subsection, the creditor receives a further written notification from the customer that any portion of a previously disputed amount is still in dispute, the creditor may not report to any third party that such amount is delinquent, unless the creditor also reports that the amount is in dispute pursuant to the applicable provisions of this section and, at the same time, notifies the customer in writing of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

(3) If a creditor has reported a disputed amount as being delinquent to any third person, the creditor shall report promptly in writing to any person to whom such report was made any subsequent resolution of the reported delinquency.

(4) If a creditor has reported an amount as being delinquent to a third party, and such amount is subsequently disputed by the customer in accordance with the requirements of subsection (a) of this section, the creditor shall promptly (in no case more than 5 business days after receipt by the creditor of the proper written notification of the billing

20/ A report by a creditor with reference to a disputed amount must include a reference that the amount is in dispute pursuant to the applicable provisions of this section and shall not be considered to be "reported as delinquent."

error) mail or deliver a written notice to each third party to whom the delinquency was reported that the amount is in dispute, and shall promptly notify each such third party of any subsequent resolution of the dispute. A creditor need not comply with the requirements of this paragraph if the dispute is resolved within 5 business days after receipt by the creditor of proper written notification of a billing error.

(f) Forfeiture penalty. (1) Any creditor who fails to comply with the requirements of this section forfeits any right to collect from the customer the amount indicated by the customer as being in error, whether or not such amount is in fact in error, and any corresponding finance charges, provided that the amount so forfeited under this section shall not exceed \$50 for each item or transaction on a periodic statement indicated by the customer as being in error. In no case shall a creditor forfeit any amount for an error in a total figure or subtotal figure reflected on a statement which is caused solely by an error in another item which is the subject of a dispute, nor shall a creditor suffer any forfeit more than once for any item or transaction which may appear on a periodic statement.

(2) Nothing in this subsection shall be construed to limit a customer's right to recover under § 130 of the Act.

(g) Exceptions to general rule. This section does not apply to credit other than open end, whether or not a periodic statement is mailed or delivered, unless such credit is extended on an account by use of a credit card.

11. Draft regulations to implement §§ 409 and 411 of Title IV of P. L. 93-495 will be issued by the Board at a later date.

12. The effective date of these regulations shall be October 28, 1975.

13. This notice is published pursuant to section 553(b) of Title 5, United States Code, and § 262.2(a) of the Rules of Procedure of the Board of Governors of the Federal Reserve System (12 C. F. R. 262.2(a)).

Interested persons are invited to submit relevant data, views, or arguments concerning this proposal, including possible effects on the cost and the availability of consumer credit. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than May 30, 1975. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.

By order of the Board of Governors, April 28, 1975.

(signed) Griffith L. Garwood

Griffith L. Garwood
Assistant Secretary of the Board

[SEAL]